

12-14-2009

State v. Scott Clerk's Record Dckt. 37018

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Appellant

Vs.

MATTHEW GILBERT SCOTT,

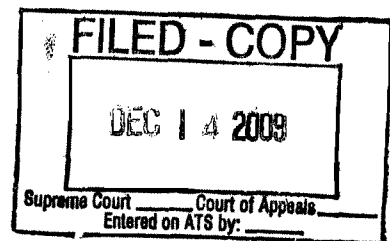
Defendant-Respondent.

Appealed from the District Court of the First Judicial
District of the State of Idaho, in and for Bonner County

HON. JOHN T. MITCHELL
District Judge

DOUGLAS B. MARKS
Attorney for Respondent

KENNETH K. JORGENSEN
Attorney for Appellant



37018

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,)	SUPREME COURT NO 37018
)	
	)	CLERK'S RECORD ON APPEAL
Plaintiff-Appellant,)	
vs.)	
)	
MATTHEW GILBERT SCOTT,)	
)	
Defendant-Respondent.)	
_____)	

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and for
the County of Bonner.

HONORABLE JOHN T. MITCHELL
District Judge

KENNETH JORGENSEN
DEPUTY ATTORNEY GENERAL
P.O. BOX 83720
BOISE, ID 83720-0010

ATTORNEY FOR APPELLANT

DOUGLAS B. MARKS
ELSAESSER JARZABEK ANDERSON MARKS & ELLIOT
P.O. BOX 1049
SANDPOINT, ID 83864

ATTORNEY FOR RESPONDENT

COPY

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State of Idaho vs. Matthew Gilbert Scott

Date	Code	User		Judge
12/29/2007	NCRM	PEINE	New Case Filed - Misdemeanor	Magistrate Court Clerks
12/31/2007	BNDS	TURNBULL	Bond Posted - Surety (Amount 1000.00)	Barbara Buchanan
	BNDS	TURNBULL	Bond Posted - Surety (Amount 500.00)	Barbara Buchanan
	NTDF	TURNBULL	Notice to Defendant	Barbara Buchanan
1/4/2008	PROS	PEINE	Prosecutor assigned Sandpoint City Prosecutor	Magistrate Court Clerks
	CITF	PEINE	Original Citation Filed	Magistrate Court Clerks
	AFPC	PEINE	Affidavit Of Probable Cause	Magistrate Court Clerks
	DISF	PEINE	Disqualification Of Judge - Self	Debra A. Heise
1/7/2008	ORPC	FORELL	Order Finding Probable Cause	Barbara Buchanan
1/9/2008	APER	FORELL	Defendant: Scott, Matthew Gilbert Appearance Bruce H. Greene	Magistrate Court Clerks
	PLEA	FORELL	A Plea is entered for charge: - NG (I18-8004 {M} Driving Under The Influence)	Magistrate Court Clerks
	PLEA	FORELL	A Plea is entered for charge: - NG (I18-8001 Driving Without Privileges)	Magistrate Court Clerks
	RQFD	FORELL	Request For Discovery	Magistrate Court Clerks
1/14/2008	RRFD	ADLER	Response To Request For Discovery	Magistrate Court Clerks
	RQFD	ADLER	Plf's Request For Discovery	Magistrate Court Clerks
1/21/2008	CHJG	HARBISON	Change Assigned Judge	Barbara Buchanan
	HRSC	HARBISON	Hearing Scheduled (Pretrial Conference 03/25/2008 02:00 PM)	Barbara Buchanan
	HRSC	HARBISON	Hearing Scheduled (Jury Trial 04/17/2008 09:00 AM)	Barbara Buchanan
		HARBISON	Notice of Hearing	Barbara Buchanan
3/25/2008	CTLG	AYERLE	Court Log- 08-53	Barbara Buchanan
	WAIV	AYERLE	Waiver Of Speedy Trial - CTLG 08-53	Barbara Buchanan
	NOFH	AYERLE	Notice Of Hearing	Barbara Buchanan
	HRVC	AYERLE	Hearing result for Jury Trial held on 04/17/2008 09:00 AM: Hearing Vacated	Barbara Buchanan
	INHD	AYERLE	Hearing result for Pretrial Conference held on 03/25/2008 02:00 PM: Interim Hearing Held RESET	Barbara Buchanan
	CHJG	AYERLE	Change Assigned Judge	Michael J Griffin
	HRSC	AYERLE	Hearing Scheduled (Jury Trial 05/08/2008 09:00 AM) Set by BAB	Michael J Griffin
5/6/2008	DRCD	ANDERSON	Driving Record	Michael J Griffin
			Document sealed	
5/7/2008	STIP	ANDERSON	Stipulation To Continue	Michael J Griffin
	WAIV	ANDERSON	Waiver Of Speedy Trial	Michael J Griffin
	ORDR	ANDERSON	Order To Continue	Michael J Griffin

State of Idaho vs. Matthew Gilbert Scott

Date	Code	User	Judge
5/7/2008	HRVC	ANDERSON	Hearing result for Jury Trial held on 05/08/2008 09:00 AM: Hearing Vacated
	CHJG	ANDERSON	Change Assigned Judge
	HRSC	ANDERSON	Hearing Scheduled (Motion to Suppress 05/23/2008 11:00 AM)
	NOFH	ANDERSON	Notice Of Hearing
5/22/2008	STIP	SECK	Stipulation to Continue Motion to Suppress
5/23/2008	ORDR	SECK	Order vacating Motion to Suppress and resetting it for June 5, 2008 at 2:30 pm.
	HRVC	SECK	Hearing result for Motion to Suppress held on 05/23/2008 11:00 AM: Hearing Vacated
	CHJG	SECK	Change Assigned Judge
	HRSC	SECK	Hearing Scheduled (Motion to Suppress 06/05/2008 02:30 PM)
6/5/2008	CTLG	AYERLE	Court Log- 08-80
	EXHB	AYERLE	Exhibit List
	INHD	AYERLE	Hearing result for Motion to Suppress held on 06/05/2008 02:30 PM: Interim Hearing Held
6/6/2008	ORDR	AYERLE	Order Granting Motion to Suppress
	GRNT	AYERLE	Hearing result for Motion to Suppress held on 06/05/2008 02:30 PM: Motion Granted
6/11/2008	HRSC	FORELL	Hearing Scheduled (Jury Trial 07/10/2008 09:00 AM)
		FORELL	Notice of Hearing
7/3/2008	APDC	BRACKETT	Appeal Filed In District Court
	NTOA	BRACKETT	Notice Of Appeal
	CHJG	BRACKETT	Change Assigned Judge
7/9/2008	MOTN	SECK	Motion for Order to Stay Proceedings (Motion to Suppress is on Appeal)
	ORDR	SECK	Order Staying hearings and vacating Jury Trial until outcome of Appeal
	HRVC	SECK	Hearing result for Jury Trial held on 07/10/2008 09:00 AM: Hearing Vacated - to be reset once outcome of Appeal of Motion to Suppress is determined.
10/10/2008	ORDR	PHILLIPS	Order of Reassignment
	CHJG	PHILLIPS	Change Assigned Judge
11/5/2008	TRAN	MUELLER	Transcript Filed by Cindy Simmons of June 5, 2008, Motion to Suppress
11/13/2008	NLT	MUELLER	Notice Of Lodging Transcript On Appeal
	CERT	MUELLER	Certificate Of Mailing
11/17/2008	MISC	MUELLER	Receipt of Transcript acknowledgment by Bruce Greene

State of Idaho vs. Matthew Gilbert Scott

Date	Code	User		Judge
11/19/2008	MISC	MUELLER	Receipt of Transcript acknowledgment by Lori Meulenberg	John T. Mitchell
11/20/2008	MOTN	TURNBULL	Motion to Withdraw	John T. Mitchell
	HRSC	TURNBULL	Hearing Scheduled (Motion to Withdraw 12/16/2008 02:00 PM)	Don L. Swanstrom
12/5/2008	NST	MUELLER	Notice Of Settling Transcript On Appeal	John T. Mitchell
12/12/2008	OBJC	TURNBULL	State Objection to withdrawal and Waiver of Appearance	John T. Mitchell
12/16/2008	MINE	AYERLE	Minute Entry RE Magistrate does not have jurisdiction to hear Motion to Withdraw as case is on appeal to District Court	Don L. Swanstrom
	HRVC	AYERLE	Hearing result for Motion to Withdraw held on 12/16/2008 02:00 PM: Hearing Vacated	Don L. Swanstrom
12/18/2008	FIOC	PHILLIPS	File Out Of County	John T. Mitchell
1/7/2009	BREF	MUELLER	Appellant's brief filed	John T. Mitchell
1/12/2009	MOTN	PHILLIPS	Motion to Withdraw - Greene	John T. Mitchell
	HRSC	PHILLIPS	Hearing Scheduled (Motion to Withdraw 01/27/2009 04:00 PM) Kootenai County	John T. Mitchell
1/22/2009	MISC	TURNBULL	State's objection to defense attorney's request for withdrawal; and state's waiver of appearance - FAX to Judge's chamber	John T. Mitchell
1/27/2009	DCHH	PHILLIPS	Hearing result for Motion to Withdraw held on 01/27/2009 04:00 PM: District Court Hearing Held Court Reporter: Keri Veare Number of Transcript Pages for this hearing estimated: Kootenai County	John T. Mitchell
	GRNT	PHILLIPS	Hearing result for Motion to Withdraw held on 01/27/2009 04:00 PM: Motion Granted Kootenai County	John T. Mitchell
	CTLG	PHILLIPS	Hearing result for Motion to Withdraw held on 01/27/2009 04:00 PM: Court Log- Kootenai County	John T. Mitchell
1/28/2009	MISC	PHILLIPS	Court log received from Kootenai County	John T. Mitchell
2/2/2009	LETT	OPPELT	Letter from Bruce Greene to Judge Mitchell	John T. Mitchell
	AFFD	OPPELT	Affidavit	John T. Mitchell
	ORDR	OPPELT	Order Authorizing Withdrawal	John T. Mitchell
2/5/2009	OBJC	PHILLIPS	State's Objection to Dismissal of Appeal	John T. Mitchell
3/3/2009	APER	PHILLIPS	Notice of Appearance - Doug Marks for Defendant	John T. Mitchell
4/9/2009	BREF	MUELLER	Respondent's Brief filed by Atty Marks	John T. Mitchell
4/28/2009	REPL	MUELLER	Appellant's Response to Respondent's Brief (CD attached)	John T. Mitchell
7/10/2009	HRSC	PHILLIPS	Hearing Scheduled (Oral Argument on Appeal 09/02/2009 09:00 AM) telephonic - Kootenai County	John T. Mitchell

State of Idaho vs. Matthew Gilbert Scott

Date	Code	User		Judge
7/10/2009		PHILLIPS	Notice of Hearing	John T. Mitchell
9/2/2009	DCHH	MUELLER	Hearing result for Oral Argument on Appeal held on 09/02/2009 09:00 AM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: none given - telephonic - Kootenai County	John T. Mitchell
	CTLG	MUELLER	Hearing result for Oral Argument on Appeal held on 09/02/2009 09:00 AM: Court Log- telephonic - Kootenai County	John T. Mitchell
9/4/2009	MEMO	MUELLER	Memorandum Decision and Order on Appeal-AFFIRMED decision of Magistrate Court	John T. Mitchell
	RMAN	MUELLER	Remanded back to Magistrate Court	John T. Mitchell
	CHJG	MUELLER	Change Assigned Judge	Barbara Buchanan
9/10/2009	FIRT	OPPELT	File Returned	John T. Mitchell
9/15/2009	HRSC	FORELL	Hearing Scheduled (Status Conference 09/30/2009 03:30 PM)	Barbara Buchanan
		FORELL	Notice of Hearing	Barbara Buchanan
9/23/2009	NTOA	MUELLER	Notice Of Appeal	Barbara Buchanan
	APSC	MUELLER	Appealed To The Supreme Court	Barbara Buchanan
	CHJG	MUELLER	Change Assigned Judge	Idaho Supreme Court
9/30/2009	APSC	MUELLER	Hearing result for Status Conference held on 09/30/2009 03:30 PM: Appealed To The Supreme Court	Barbara Buchanan
10/5/2009	CCOA	MUELLER	Clerk's Certificate Of Appeal	Idaho Supreme Court
10/16/2009		MUELLER	Notice of Appeal filed w/ISC	Idaho Supreme Court
		MUELLER	Clerk's Cert filed w/ISC-Docket # assigned	Idaho Supreme Court
11/3/2009	MOTN	OPPELT	Motion to Withdraw as Attorney of Record and Notice of Hearing	Idaho Supreme Court
	HRSC	OPPELT	Hearing Scheduled (Motion to Withdraw 12/02/2009 03:00 PM)	Barbara Buchanan

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

THE STATE OF IDAHO,

Plaintiff,

Scott, Matthew G.

Defendant.

DOB
SSN
DL#
State

State of Idaho,

County of Bonner

2008 JAN -4 P 3:04

COURT CASE NUMBER caf
PROBABLE CAUSE AFFIDAVIT IN SUPPORT
OF ARREST

ss

I, Derrick Hagstrom, the undersigned, being first duly sworn on oath, deposes and says that:

1. I am a peace officer employed by the Sandpoint Police Department.
2. The defendant was arrested on 12/29/07 at 0200 ☒ AM ☐ PM for the crime of driving while under the influence of alcohol, drugs or any other intoxicating pursuant to Section 18-8004 Idaho Code. Second or more DUI offense in the last ten years? ☒ YES ☐ NO ☐ FELONY ☒ MISDEMEANOR
3. Location of Occurrence: Syringa Heights/ Pine St. (P.C. was at Pine and Division, Speed 32 in 25)
4. Identified the defendant as: (print name) Scott, Matthew G. by: (check box)
☐ Military ID ☐ State ID Card ☐ Student ID Card ☒ Drivers License ☐ Credit Cards
☐ Paperwork found ☐ Verbal ID by defendant
☐ Witness _____ identified defendant.
☐ Other
5. Actual physical control established by: ☒ Observation by affiant ☐ Observation by
☐ Admission of Defendant to _____, ☐ Statement of Witness:
☐ Other
6. I believe that there is probable cause to believe the defendant committed such crime because of the following facts:
(NOTE: You must state the source of all information provided below. State what you observed and what you learned from someone else, identifying that person):

PROBABLE CAUSE FOR STOP AND ARREST:

On 12/29/07 at approx. 0146 Hours I observed a blue Dodge truck traveling west on Pine St. at 32mph in a posted 25mph zone. I visually estimated his speed at 30 mph and accelerating I activated my stationary radar, getting good lock and tone at 32mph. I conducted a traffic stop on the vehicle at Pine and Syringa Heights. I contacted the driver (Scott) and explained the reason for the stop. I asked Scott how much he had to drink, he told me none. I went back to my car and ran his driver status, which came back suspended for insurance. I recontacted and asked Scott to step out of his vehicle. I asked Scott to blow into my hand, when he did I could detect the strong odor of an alcoholic beverage coming from his breath. I again asked Scott how much he had to drink, he told me none. I conducted SFST's with Scott which he failed.

HGN: Scott scored all six points possible, but did not show vertical nystagmus.

Walk and turn: Scott scored 1 point for stepping out of the instruction position. Scott scored no other points.

One Leg Stand: Scott scored 1 point for swaying during this evaluation.

Alphabet: Scott recited the alphabet without deviation, but did have a distinct sway.

Count: Scott was asked to count from 66 to 88. Scott counted as follows: 66-80, then said, 89, then down 78, 77-66

That at said time and place (Derrick Hagstrom) the Affiant requested the above named respondent to submit to evidentiary test for alcohol concentration by (describe circumstances of request Breath sample): and that thereafter the above named respondent (☒ Agreed ☐ Refused) to submit to an evidentiary test (describe circumstance) providing two samples a .105/.114 and that reason thereof, the Affiant (☒ Seized ☐ Did Not Seize) the drivers license of the above named respondent and is herewith submitting the same to the Court and Department of Transportation for suspension under I.C. 18-8002 & 18-8002A.

D.U. I. NOTES

Odor of alcoholic beverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Admitted drinking alcoholic beverage	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Slurred speech	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Impaired memory	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Glassy/bloodshot eyes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/> Other		

Sobriety Tests

Gaze Nystagmus	<input type="checkbox"/> Pass	<input checked="" type="checkbox"/> Fail
Walk & Turn	<input checked="" type="checkbox"/> Pass	<input type="checkbox"/> Fail
One Leg Stand	<input checked="" type="checkbox"/> Pass	<input type="checkbox"/> Fail
Accident Involved	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Injury	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Drugs Suspected ☐ Yes ☒ No

Reason Drugs are Suspected

Drug Recognition Evaluation Performed ☐ Yes ☒ No

Defendant was tested for alcohol concentration, drugs or other intoxicating substances. Prior to testing, defendant was substantially informed of the consequences of refusal and failure of the test as required by Section 18-8002 and 18-8002A, Idaho Code. The breath test was performed in compliance with Section 18-8004(4) Idaho Code and the standards and methods adopted by the Department of Law Enforcement.

BAC: .105/.114 by: ☒ Breath ☐ Blood ☐ Urine ☐ Refusal Intoxilyzer 5000

— 6 —

- ☐ Alco Sensor Instrument Serial #: 1219030
☐ Alco Sensor Instrument Serial #: 1012439
☐ Alco Sensor Instrument Serial#: 1082428

- ☐ SPD Serial #: 68-013383
☒ BCSO Serial #: 68-011905

Name of person administering breath test: Derrick Hagstrom Date Certification Expires:12/31/07

Signed: _____

(affiant)

Subscribed and sworn to before me on _____

(Date)

 PERSON AUTHORIZED TO
 ADMINISTER OATHS.

Title: _____

(or)

 NOTARY PUBLIC FOR IDAHO

Residing at: _____

My Commission expires: _____



STATE OF IDAHO)
County of Bonner)
FILED 1-4-08)
AT 2:04 P.M.)
CLERK, DISTRICT COURT)
Deputy CP

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,)
Plaintiff,)

vs)

NAME: Scott, Matthew G.
D.O.B. [REDACTED]
D.L. [REDACTED]

AFFIDAVIT

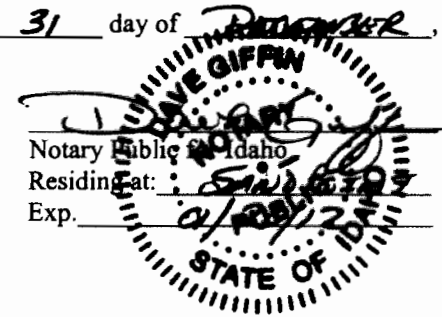
Defendant.)

I, Derrick Hagstrom, a police officer employed by the Sandpoint Police Department, do solemnly swear that the attached reports are true and correct copies of original reports prepared and submitted by Derrick Hagstrom, an officer of said department, and further, are true and correct accounts of the incident leading to the issuance of Idaho Uniform Citation # 41162

This affidavit is true, accurate, and complete upon my personal knowledge, information, or belief.


AFFIANT

SUBSCRIBED AND SWORN to before me this 31 day of December, 2007.


Notary Public for Idaho
Residing at: Sandpoint, ID
Exp. 12/31/2009

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

STATE OF IDAHO,

Plaintiff,

Vs.

NAME: Scott, Matthew G.

D.O.B.

D.L.

Defendant,

ORDER FINDING PROBABLE CAUSE

The above-named Defendant having been charged with, or arrested for, the offense(s) of Driving without Privileges I.C. 18-8001 , and having examined the Affidavit of Officer Derrick Hagstrom, the Court finds a substantial and factual basis for believing that said offense has been committed and that said defendant committed it.

IT IS THEREFORE ORDERED that a Warrant may be issued for the arrest of the above-mentioned Defendant, or if he has been arrested without Warrant, that he may be detained and he may be required to post bail prior to his release.

DATED this _____ day of _____, 2007

Magistrate

01/02/2008
11:27

Sandpoint Police Department
Arrest Information:

336
Page: 1

Booking Number: 07-002241

InAct

Name Number: 89022 Matthew Gilbert Scott

Arrest Number: 1
Time/Date of Arrest: 02:00:00 12/29/2007
Location of Arrest: Syringa Heights/Pine
Arrest Area: 4
Judicial Age Status: A
Arrest Type: VIEW Arrest without Warrant
Arrest Disposition: NA Non-Juvenile
Pre-Sentence Class: PM Pre Sentence Misdemeanor
Arrest Circumstances: UARM

Reference: CITE #41162
Arrest Officer: Hagstrom, D
Arrest Agency: SPD
Tracking Number: 07-020801
Age at Arrest: 21

Arrest Narrative:

Sat Dec 29 03:18:25 PST 2007

1. (M) 18-8004 DUI second Off. Bond \$1000.00. Cit#41162

2. (M) 18-8001 DWP. Bond \$500.00. Cit#41162

Total Bond \$1500.00 amb275

= = = = =

Arrest Circumstances Detail:

Arrest Circumstances Detail

Seq Code Description

1 UARM Unarmed

Main Radio Log Table:

Time/Date	Typ	Unit	Code	Zone	Agnc	Description
03:15:28 12/29/2007	1	SP38	CMPLT	4	SPD	incid#=07-020801 charges dui a
02:18:06 12/29/2007	1	SP38	ARRVD	4	SPD	incid#=07-020801 det call=71
02:16:02 12/29/2007	1	SP21	CMPLT	4	SPD	incid#=07-020801 Completed cal
02:16:02 12/29/2007	1	SP39	CMPLT	4	SPD	incid#=07-020801 Completed cal
02:13:57 12/29/2007	1	SP21	DLINQ	4	SPD	last=mccall first=dale mid=r*
02:12:28 12/29/2007	1	SP38	14	4	SPD	ed jarzabek
02:09:07 12/29/2007	1	SP38	ENRT	4	SPD	incid#=07-020801 to det call=7
02:05:54 12/29/2007	1	SP38	14	4	SPD	to sp21,
02:05:38 12/29/2007	1	SP38	14	4	SPD	to sp39, no answer
02:01:20 12/29/2007	1	SP38	ARRVD	4	SPD	Traffic Stop call=71
01:54:25 12/29/2007	1	SP21	ARRVD	4	SPD	incid#=07-020801 Arrived on sc
01:50:09 12/29/2007	1	SP21	ENRT	4	SPD	incid#=07-020801 Enroute to a
01:49:00 12/29/2007	1	SP39	ARRVD	4	SPD	incid#=07-020801 Arrived on sc

Narrative:

Dispatch Summary Statement: Matthew Gilbert Scott, dob [REDACTED] was arrested for DUI.

OVERVIEW:

I had probable cause to stop a vehicle in the city of Sandpoint for excess of posted speed limit. By the time I was able to catch up to the vehicle, the vehicle was out of the city limits. I subsequently stopped the vehicle for the infraction that happened in the city. I performed field sobriety tests on the driver, who subsequently failed them. The driver was arrested and offered a chance to provide me with a breath sample, which he did. He blew over the legal limit and was booked in on DUI and DWP.

SUSPECT: Name: MATTHEW G SCOTT
DOB: [REDACTED]
SSN: [REDACTED]
Address: 845 EVERGREEN RD SANDPOINT, ID 83864
Phone: 290-6132

PASSENGER: Name: AMANDA J MAGDANZ
DOB: [REDACTED]
Address: 424 S LINCOLN SANPDPOINT, ID 83864
Phone: 263-5323

PASSENGER: Name: LINDSEY E MAGDANZ
DOB: [REDACTED]
Address: 796 CEDAR RIDGE RD SANDPOINT, ID 83864
Phone: 265-9653

PASSENGER: Name: EDWARD C JARZABEK
DOB: [REDACTED]
Address: 2122 LEADVILLE BOISE, ID 83706
Phone: 208-794-3310

EVIDENCE:

AUDIO: BAC RESULTS
VIDEO: NO
PHOTOGRAPHS: 01-122907-256
CITATION #: NO
41162-DUI SECOND OFFENSE
DWP
41163-NO INSURANCE

OFFICER(S) INVOLVED: OFFICER HAGSTROM
OFFICER GIESE
CORPORAL WIEDEBUSH

NARRATIVE:

On 12-29-07 at about 0140 hours, I was traveling westbound on Pine behind a large blue Dodge truck carrying two snowmobiles in the back. This vehicle stopped at Pine and Division and continued west on Pine Street. I pulled up behind the vehicle as I was following it and stopped. As it took off from Division, it accelerated. I estimated the speed at 35 mph and accelerating. I activated my stationary radar as I was stopped at the intersection of Pine and Division facing westbound directly behind the vehicle. There were no other vehicles in sight on the roadway. I got good tone and locked the speed in at 32 mph. At this time, I still estimated the vehicle was accelerating. I locked the speed and attempted to catch the vehicle to make a traffic stop on it. Due to the slick nature of the road conditions, there was approximately four inches of snow on the ground, I was having a difficult time catching up to the vehicle as it had plenty of weight with the snowmobiles in the back to accelerate from Division. By the time I got close enough to conduct a traffic stop on the vehicle, I was at the intersection of Pine and Syringa Heights. The vehicle turned south on Syringa Heights. I activated my overhead emergency lights, conducting a traffic stop with the vehicle, stopping approximately 300 yards to the south of Pine Street on Syringa Heights.

I contacted the driver and explained the reason for the stop was his speed. I requested to see his driver's license, registration and proof of insurance. The driver was able to provide to me his Idaho driver's license, identifying him as Matthew Scott. He was unable to provide me with current insurance. He did provide me with one insurance card that had expired. He was also unable to provide me with registration. I asked him if he had registration. He seemed to be confused about what I was asking for and stated he had already provided that for me, however, all he had provided was the insurance. He did not give me registration.

I detected the odor of an alcoholic beverage coming from within the vehicle. I also noted Scott's eyes were bloodshot and glassy. I asked Scott how much he had to drink. He told me had nothing to drink. I told him I was going to return to my patrol vehicle, run his driver's status and then return to speak with him.

I ran Scott's driver's status. Dispatch advised me Scott's driver's status was suspended with dates of August 2007 through June 2010 for failure to maintain insurance. At this point, Officer Giese arrived on scene and I explained to him the situation.

I re-approached Scott's vehicle and made contact with him. I asked him to exit his vehicle, which he did. I asked Scott again how much he had to drink. He said he had nothing to drink. I asked Scott to blow into my hand, which he did. I detected the strong and distinct odor of an alcoholic beverage coming from his breath. I told Scott we would start over and asked him again how much he had to drink. He again told me nothing.

From that point, I continued with field sobriety evaluations. I asked Scott if he had any head injuries. He told me he didn't. I asked him if he had any problems with his knees, back, ankles or hips. He told me did not. I asked him if he took any medication at all. He told me he did not.

I proceeded to the horizontal gaze nystagmus evaluation. Given Scott's height, it would be difficult for me to conduct this evaluation accurately so I asked Scott to sit on the hood of my patrol vehicle. NOTE: Scott had a large coat on. I asked him if he had any weapons on him. He told me he did not. I asked him if I could pat him down for my safety. He said that would be fine. I conducted a pat down search of Scott's person for weapons, finding none. After I asked Scott to sit on the hood of my car, I conducted the horizontal gaze nystagmus evaluation.

During that evaluation, I noted Scott's pupils were approximately the same size and his eyes tracked equally. I did detect all six points in his eyes. I saw a lack of smooth pursuit and distinct and sustained nystagmus at maximum deviation in both eyes. He also had onset prior to 45 degrees. I did not detect vertical nystagmus in Scott's eyes.

I then proceeded to the walk and turn evaluation. I started out by telling Scott I did not want him to start any evaluation until I specifically told him to begin nor did I want him to stop any evaluation until I told him to stop. I asked if he understood. He told me he did. I then proceeded to explain the evaluation to Scott. I asked Scott to place his right foot in front of his left, touching heel to toe, with his hands down at his sides, which he did. I asked him to remain in that position while I explained and demonstrated the evaluation to him.

I then explained to Scott that I wanted him to take nine heel to toe steps down an imaginary straight line towards my patrol vehicle. I told Scott I wanted him to touch heel to toe on each step, count each step out loud and look at his feet while he took those steps. He asked me, Nine? I told him yes, nine. I told him while he did this evaluation I wanted him to keep his hands down at his sides. I then demonstrated the evaluation for Scott. As I demonstrated the evaluation to Scott, he stepped out of the instruction position to keep his balance and avoid falling down. I asked Scott if he had any questions. He told me he did not. I told him to begin.

Scott performed the walk and turn evaluation without scoring any more points.

I moved on to the one leg stand evaluation. I explained and demonstrated the one leg stand evaluation to Scott. I told him I wanted him to lift the foot of his choosing about 6 inches off the ground, point his toe forward, keep his hands down at his sides, look at his raised foot and count out loud by 1000's, 1001, 1002, 1003 and so on until I told him to stop and it would be about 30 seconds. I told him I would be timing it and I wanted him to continue counting until I told him to stop. I told him if he put his foot down, he was to pick it back up and continue counting where he left off. I asked him if he had any questions. He stated he did not. I then told him to begin.

During the one leg stand, Scott began to lose his balance, causing him to sway, scoring one point on the one leg stand. He did not score any additional points. I told him to go ahead and put his foot down after the 30 seconds had elapsed.

I asked Scott if he graduated high school. He told me he had and he attended U of I. I asked if he knew the alphabet. He told me he did. I told Scott I wanted him to stand with his feet together and his hands down at his sides with his head tilted slightly back and his eyes closed. I told him I wanted him to

recite the alphabet from A to Z without singing it. I asked him if he understood. He told me he did. I told him to begin.

During this evaluation, Scott did not deviate from the alphabet, however, he did have a substantial sway.

I told Scott I wanted him to stay in the same position and count from 66 to 88 and 88 back to 66. I asked him if he understood. He said he did. I then told Scott to begin.

Scott counted from 66 to 80. He then went to 89 and began counting backwards, stating 89, 78, 77, 76 and so on. Scott continued counting down to the number 66. He then stopped. I asked him if he remembered where I told him to count from and to. He said from 62 to 80, which was incorrect. I told him from 66 to 88.

I conducted the horizontal gaze nystagmus evaluation one more time to confirm what I had seen earlier. I again detected nystagmus in both eyes. During this evaluation, Scott displayed a distinct sway.

I told Scott at this time I believed he had too much to drink to be operating a motor vehicle. I asked him to turn around and place his hands behind his back because he was under arrest for DUI. He complied, turned around and placed his hands behind his back. I placed handcuffs on Scott. I used two sets of handcuffs given Scott's size. I checked them for proper fit and double locked them. I searched Scott's person for weapons or contraband, finding none.

I asked Scott what he would like done with his vehicle. He told me he would like us to call a friend of his named Dale. He told us we could use his cell phone for that phone call and told us how to access the number on his cell phone. Officer Giese made that phone call.

After finding no weapons or contraband on Scott's person, I placed him in the back seat of my patrol vehicle. I then transported Scott to the jail while Officer Giese and Corporal Wiedebush stood by with the vehicle and passengers awaiting Dale, who the vehicle was turned over to.

After arriving at the jail, I explained the process to Scott and what would be happening. I read him the ALS advisory form in its entirety. I asked Scott if he would provide me with a breath sample. He said he would. He did subsequently provide me with two breath samples. Those results were .105/.114. NOTE: While detention staff was doing their initial pat search of Scott when he came into the facility, I observed them checking his mouth for any foreign objects or debris, finding none. I observed the 15 minute monitoring period prior to requesting a sample from Scott.

I told Scott he was going to be booked in on DUI as well as driving on a suspended license. I told him I would not be charging him with possession of a suspended license. I completed all necessary paperwork, booking Scott in on the charge of DUI second offense. Scott had a DUI (under the age of 21) in 2006. I also booked him in on the charge of DWP as I believed Scott did or should have known his license was suspended for failure to maintain insurance. His bond was set at \$1,500 (\$1,000 for DUI and \$500 for DWP). I did not issue Scott a permit as his license was suspended.

I did complete Citation #41162, charging Scott with DUI second offense and

driving without privileges. I also completed Citation #41163, charging Scott with failure to provide current proof of insurance. I left a copy of the paperwork with Scott's personal property and cleared without further contact.

OFFICER HAGSTROM

tr

ATTACHMENTS:

DRIVERS PRINTOUT
BOOKING SHEET
INTOXILZYER PRINTOUT
CITATIONS
ALS FORM
DUI AFFIDAVIT
PC AFFIDAVIT
IDAHO DL

Law Supplemental Narrative:

Seq	Name	Date	Supplemental Narratives Narrative
-----	------	------	--------------------------------------

SANDPOINT POLICE DEPT.
District Court I (208) 265-1432 x 204

41162

IDAHO UNIFORM CITATION

IN THE DISTRICT COURT OF THE 1st JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
STATE OF IDAHO

COMPLAINT AND SUMMONS

☐ Infraction Citation
OR
☒ Misdemeanor Citation
☐ Accident Involved

VS.

SCOTT

Last Name

MATTHEW

First Name

G

Middle Initial

IPUC #

USDQT TK Census #

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other

☐ GVWR 26001 + ☐ 16 + Persons ☐ Placard Hazardous Materials DR# 07-00801

Home Address 845 EVERGREEN RD SANDPOINT, ID 83864

Business Address _____ Ph # _____

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named Defendant,

or SS# 013355275 State ID Sex: ☒ M ☐ F

Height 6'6" Wt. 235 Hair BRO Eyes BRO DOB 1/14/86

Veh. Lic. # KJ 3406 State ID Yr. of Vehicle 03 Make DODGE

Model TRUCK Color BLU

Did commit the following act(s) on 12/29, 20 07 at 0146 o'clock 1 M.

Vlo. #1 DUI SECOND OFFENSE 18-8004
Code Section

Vlo. #2 DWP 18-8001
Code Section

Location DUI / PINE (ARREST SPRING MOUNTS & PINE)

Hwy. 12/29/07 SP38 SPD BONNER County, Idaho.

Date _____ Officer/Party _____ Serial #/Address _____ Dept. _____

Date _____ Witnessing Officer _____ Serial #/Address _____ Dept. _____

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the

District Court of BONNER County, SANDPOINT, Idaho,

located at 215 S. FIRST AVENUE on the _____ day of _____,

20 _____, at _____ o'clock _____ M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

IN - CUSTODY
Defendant's Signature

I hereby certify service upon the defendant personally on _____, 20 _____

Defendant's Name:

41162

M.I.

FIRST
MATTHEW

LAST
SCOTT

-20-

SANDPOINT POLICE DEPT.
District Court I (208) 265-1432 x 204

41163

IDAHO UNIFORM CITATION

IN THE DISTRICT COURT OF THE ISI JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
STATE OF IDAHO

VS.

SCOTT

Last Name

MATTHEW

First Name

G

Middle Initial

COMPLAINT AND SUMMONS

☒ Infraction Citation

OR

☐ Misdemeanor Citation

☐ Accident Involved

IPUC # _____ USDOT TK Census # _____

☐ Operator ☐ Class A ☐ Class B ☐ Class C ☒ Class D ☐ Other

☐ GVWR 26001 + ☐ 16 + Persons ☐ Placard Hazardous Materials DR# 07-02881

Home Address 845 EVERGREEN RD SANDPOINT, ID 83864

Business Address _____ Ph # _____

THE UNDERSIGNED OFFICER (PARTY) HEREBY CERTIFIES AND SAYS:

I certify I have reasonable grounds, and believe the above-named Defendant

DL or SS# QK5353275 State ID Sex: ☒ M ☐ F

Height 6'6" Wt. 235 Hair BRN Eyes BRN DOB 1/14/86

Veh. Lic.# K13406 State ID Yr. of Vehicle 03 Make Dodge

Model TRUCK Color BLU

Did commit the following act(s) on 12/29, 20 07 at 0146 o'clock A M.

Vio. #1 FAIL TO SHOW CURRENT INS 49-1232
Code Section

Vio. #2 _____
Code Section

Location SPRUE & PINE

Hwy. _____ Mp. _____ BONNER County, Idaho.

Date 12/29/07 Officer/Party David [Signature] Serial #/Address SP38 Dept. SPD

Date _____ Witnessing Officer _____ Serial #/Address _____ Dept. _____

THE STATE OF IDAHO TO THE ABOVE NAMED DEFENDANT:

You are hereby summoned to appear before the Clerk of the Magistrate's Court of the

District Court of BONNER County, SANDPOINT, Idaho,

located at 215 S. FIRST AVENUE on the 18 day of

JAN, 20 07, at 4 o'clock P M.

I acknowledge receipt of this summons and I promise to appear at the time indicated.

Defendant's Name: SCOTT Defendant's Signature _____

I hereby certify service upon the defendant personally on 12/29, 20 07

Officer David [Signature]

41163

Matthew G

FIRST

LAST

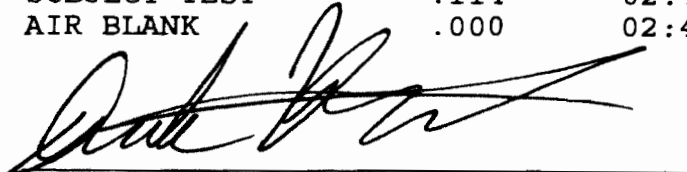
SCOTT

-12-

SANDPOINT
INTOXILYZER - ALCOHOL ANALYZER
MODEL 5000EN SN 68-011905
12/29/2007 SOLUTION LOT NO. 0000007801

SUB NAME=SCOTT, MATHEW, G
SUB DOB = [REDACTED]
O.L.N. = [REDACTED]
OPER NAME=HAGSTROM, DERRICK, W
ARREST AGENCY=0903

TEST	BrAC	TIME
AIR BLANK	.000	02:38 PST
INTERNAL STANDARDS	PASSED	02:38 PST
AIR BLANK	.000	02:38 PST
SIMULATOR TEMPERATURE IN RANGE.		
SIM CHK #0054	.079	02:38 PST
ACCEPTABLE		
AIR BLANK	.000	02:39 PST
SUBJECT TEST	.105	02:39 PST
AIR BLANK	.000	02:40 PST
SUBJECT TEST	.114	02:40 PST
AIR BLANK	.000	02:40 PST



OPERATORS SIGNATURE

222

TIME FIRST OBSERVED



State Returns - Message Received From DMV KR.ID0090011.DMV.*MRI78

Message Received From DMV

KR.ID0090011.DMV.*MRI7887989.TXT

NAM/SCOTT,MATTHEW GILBERT.DOB/19860114.SEX/M

MAY BE THE SAME AS: PAGE 01 FOR OFFICIAL INVESTIGATION PURPOSES ONLY
OLN/QK335527G. PRIVACY FLAG.
NAM/SCOTT, MATTHEW GILBERT. ** OPR STATUS/SUSPENDED.
RES/ ** CDL STATUS/NOT LICENSED.
845 EVERGREEN RD CLASS/D. ** EXP/01-14-2011.
SANDPOINT ID 83864. OLT/DRIVER LICENSE.

SEX/M. HAI/BRO. EYE/BRO. DOB/01-14-1986. SOC/530578066. ORGAN DONOR
HGT/606. WGT/235. ISS/06-15-2007. REC/090071660057. CNTY/BONN.

AKA OLN/530578066. AKA OLS/ID.
CITN/07-22-2002C. 06-28-2002A.BASIC RULE. ISP.BONNER.
ORD DEGREE/INFR.
CITN/09-15-2003C. 09-13-2003A.BASIC RULE. ISP.BONNER.
ORD DEGREE/INFR.
CITN/03-02-2004C. 02-03-2004A.BASIC RULE. SHR.BONNER.
ORD DEGREE/INFR.
SUSP/04-12-2004.UNTL/07-11-2004. INFRACTIONS. REIN FULL.04-16-2004.OP
SUSP/04-12-2004.UNTL/07-11-2004. INFRACTIONS. REIN FULL.04-16-2004.OP
CITN/12-21-2004C. 08-11-2004A.INATT DRVNG. CTY.SANDPOINT.
ORD DEGREE/MISD.
SUSP/03-08-2005.UNTL/05-07-2005. *ALCOHOL/AGE. REIN FULL.05-07-2005.OP
SUSP/08-29-2005.UNTL/10-28-2005. *ALCOHOL/AGE. REIN FULL.01-10-2006.OP
CITN/04-04-2006C. 02-26-2006A.BASIC RULE. WA. WASHINGTON.
CITN/06-12-2006C. 05-14-2006A.N/PF LIA INS. ISP.BOUNDARY.
ORD DEGREE/INFR.
SUSP/06-13-2006.UNTL/09-11-2006. ALS02+UNDR21. REIN FULL.09-18-2006.OP
CSUS/06-14-2006.UNTL/06-14-2007. DUI UNDER 21. FULL.SR22.06-14-2007.OP
SUSP/07-03-2006.UNTL/07-03-2007. N/PF LIA INS. FULL.SR22.09-20-2006.OP
CITN/08-22-2006C. 05-14-2006A.DUI UNDER 21. ISP.BOUNDARY.
ORD DEGREE/MISD.
SUSP/01-29-2007.UNTL/06-14-2010. FAIL MNT INS. FULL.SR22.05-11-2007.OP
SUSP/08-23-2007.UNTL/06-14-2010. FAIL MNT INS. OP
ADDITIONAL LICENSE TYPES CONTINUED ON NEXT PAGE...

MAY BE THE SAME AS: PAGE 02 FOR OFFICIAL INVESTIGATION PURPOSES ONLY
***** IDAHO IDENTIFICATION CARD ONLY - NOT A DRIVERS LICENSE *****
OLN/QK335527G. PRIVACY FLAG.
NAM/SCOTT, MATTHEW GILBERT. ID CARD STATUS/VALID.
RES/
845 EVERGREEN RD ** EXP/01-14-2011.
SANDPOINT ID 83864. OLT/IDENTIFICATION CARD.

State Returns - Message Received From DMV KR.ID0090011.DMV .*MRI78

SEX/M. HAI/BRO. EYE/BRO. DOB/01-14-1986. SOC/530578066. ORGAN DONOR
HGT/605. WGT/240. ISS/02-28-2007. REC/090070590003. CNTY/BONN.

AKA OLN/530578066. AKA OLS/ID.
END OF RECORD
END OF MESSAGE...

MRI 7887990 IN: DMVIO1 2255 AT 03:01 29DEC07
OUT: SBOC 192 AT 03:01 29DEC07

BONNER COUNTY DETENTION
PRE-BOOKING FORM

Booking # _____

Date 12/29/07

Name ID # _____

Officer's Case # 07-020801

ARRESTEE INFORMATION:

Name SCOTT MATTHEW G
Last First Middle

SS# [REDACTED] DOB [REDACTED] Home Phone _____

Address 845 EVERGREEN

City SANDPOINT State ID Zip 83864

Drivers License # QK3355276 State ID Class D

PHYSICAL DESCRIPTION:

Height 6'6" Weight 235 Sex M Hair BRO Eyes BPO Race W Other _____

Scars, Marks, Tattoo's _____

CHARGES AND BAIL AMOUNT

M/F	CODE	CHARGES	BOND AMOUNT	CITATION / CASE #
M	18-8004	DWI SECOND OFFENCE	1000 00	07-020801
M	18-8001	DWP	5000 00	"

ARRESTEE PROPERTY:

INMATE'S MONEY \$ 4 ⁰⁰

HAT, JACKET, BOOTS, SPACKS, CHOW, CELL PHONE

SUICIDAL YES ___ NO ___ COMMENTS _____

VEHICLE LOCATION: DALES HOUSE

PHONE CALL OFFERED BY ARRESTING OFFICER _____ ACCEPTED _____ DECLINED _____

ARRESTING OFFICER INFORMATION:

Time/Date of Arrest 0200 12/29/07 Location SYRINGA HUBBARD / PINE

Arresting Officer's # SP38 Arresting Officer's Signature [Signature]

Agency SPD I least print your name DERRICK HALSTROM

0702301

Name of Arrest
Restrictions

CMV? ☐ Yes ☒ No
Hazardous? ☐ Yes ☒ No

presence of alcohol, drugs, or

drugs or other intoxicating
substances made by a person of your

presence of drugs or other

be issued a temporary
suspension unless
vehicle, any

for a hearing to show cause

be suspended with
within ten (10) years.

be issued a temporary
suspension,
issued will not provide

NOTICE, suspending
will be suspended for
privileges for the
vehicle. If this is not
ended for one (1) year

RIGHT to show cause why
and be received by the
right to judicial review

DATE

suspended per #5

test results.

Pending: §18-8002A

of any kind.)

as indicated

of the evidentiary

Telephone Number
265 14

STATE OF IDAHO
County of Bonner
FILED 1-4-08
AT 4:00 O'clock P.M.
CLERK, DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

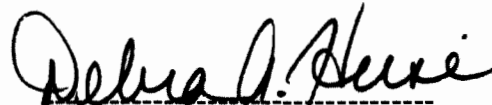
STATE OF IDAHO,	)	MISDEMEANOR CITATION # 41162
Plaintiff,)	
)	
v	)	CASE NO. CR-08- <u>0097</u>
)	
MATTHEW G. SCOTT,	)	ORDER OF
Defendant.	)	SELF DISQUALIFICATION
_____)	

It appearing to the Court that the ends of justice would best be served by another
Judge handling the above-entitled matter,

NOW, THEREFORE,

IT IS HEREBY ORDERED that pursuant to ICR 25(d) the undersigned is
hereby disqualified from presiding further in the above-entitled matter.

DATED this 4 day of January, 2008.


Debra A. Heise
Magistrate Judge


I hereby certify That a true and correct copy of the foregoing **ORDER OF SELF DISQUALIFICATION** was mailed, regular mail, and/or hand delivered, this 7 day of January, 2008, to the following:

Bonner County Case File – Original

TCA Assignment File - *Faxed 1/4/08*

Lori Meulenberg
Sandpoint City Prosecutor
Courthouse Mail

Matthew G. Scott
845 Evergreen Road
Sagle, ID 83860



Magistrate Secretary/Deputy Clerk

2008 JAN -7 A 11:41

ORDER

CR08-0097

Based upon the above Affidavit, the Court hereby finds that there is Probable Cause to believe that a crime(s) have been committed, and that the Defendant committed said crime(s).

Dated this 7 day of Jul, 2008, at _____ hours.

Buh Rll
MAGISTRATE

	Charge	Idaho Code	Violation
1.	DUI		
2.	DWP		
3.			
4.			

BRUCE H. GREENE, P.A.

Attorney at Law

320 North Second Avenue

Sandpoint, ID 83864

(208) 263-1255

(208) 265-2451

I.S.B. #1817

2008 JAN -9 A 11:48

CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW G. SCOTT,

Defendant.

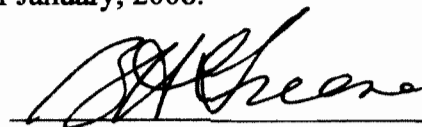
CASE NO. CR-2008-00096

Citation 41163

PLEA OF NOT GUILTY

COMES NOW, the Defendant, Matthew G. Scott, by and through his undersigned attorney and enters his plea of not guilty to the charges set forth in the citation on file herein.

DATED AND SIGNED this 7 day of January, 2008.



BRUCE H. GREENE, P.A.

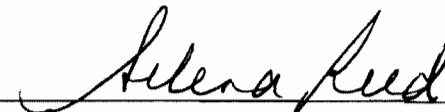
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of January, 2008, a true and correct copy of the foregoing document was delivered, via the method indicated below, addressed to:

City Prosecuting Attorney
1123 Lake Street
Sandpoint, Idaho 83864

Via Facsimile: 255-1368



Secretary

PLEA OF NOT GUILTY

BRUCE H. GREENE, P.A.
Attorney at Law
320 North Second Avenue
Sandpoint, Idaho 83864
(208) 263-1255
Fax (208) 265-2451
I.S.B. #1817

2008 JAN -9 A 10:40

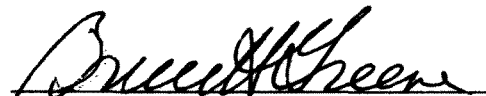
CLERK OF DISTRICT COURT

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	CASE NO. CR 2008-00097
vs.	)	Citation Number: 41162
)	
MATTHEW G. SCOTT,	)	PLEA OF NOT GUILTY
)	
Defendant.)	

COMES NOW, the Defendant by and through his undersigned attorney and enters his plea of not guilty to the charges set forth in the complaint on file herein and requests trial by jury in this matter.

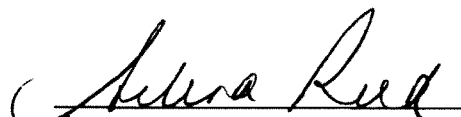
DATED AND SIGNED this 7 day of January, 2008.


BRUCE H. GREENE, P.A.
Attorney for Defendant

on this 7th I hereby certify that a true and correct copy of the foregoing was hand delivered,
day of January, 2008.

City Prosecuting Attorney
1123 Lake Street
Sandpoint, Idaho 83864

Via Facsimile: 255-1368


Secretary

PLEA OF NOT GUILTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

COURT MINUTES

JUDGE: BARBARA A BUCHANAN
DIVISION: MAGISTRATE COURT
CLERK: SUSAN AYERLE

CASE NO. CR-2008-97
DATE: MAR 25 2008 TIME: 2:00 PM
CD: 08-53

STATE OF IDAHO

vs MATTHEW GILBERT SCOTT

Plaintiff / Petitioner

Defendant / Respondent

Atty: SANDPOINT CITY PROSECUTOR

Atty: BRUCE GREENE

SUBJECT OF PROCEEDINGS
CHARGE

PRETRIAL CONFERENCE

INDEX	SPEAKER	PHASE OF CASE
244		Calls Case
		Present: DEF WITH BRUCE GREENE; LORI MEULENBERG FOR STATE
	BG	WAIVE SPEEDY TRIAL
		ADDITIONAL DISCOVERY TO LOOK AT
	J	VACATE JT ON 17 TH AND SET OUT
	LM	CORRECT
	J	WAIVE RIGHT
	DEF	YES
	J	ACCEPT WAIVER
		MAY 8TH AT 9:00 AM FOR JURY TRIAL
245		END

BRUCE H. GREENE, P.A.
 Attorney at Law
 320 North Second Avenue
 Sandpoint, Idaho 83864
 (208) 263-1255
 Fax (208) 265-2451
 I.S.D. #1817

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DISTRICT

2008 MAY -7 P 1:49

MARIE SCOTT
 CLERK DISTRICT COURT

DEPUTY *JS*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
 MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW G. SCOTT,

Defendant.

CASE NO. CR 2008-00097

STIPULATION TO CONTINUE

The parties stipulate to vacate the May 8th, 2008 trial setting so that Defendant's pending motion may be heard. The Defendant has previously waived speedy trial and does so again in conjunction with this request. The City also has another prior set case expected to be tried, so it does not desire to set Defendant's motion to follow juries on May 8th, 2008.

DATED AND SIGNED this 7 day of May, 2008.

Tim T. Mullen
 City Prosecuting Attorney

Bruce H. Greene
 BRUCE H. GREENE
 Attorney for Defendant

BRUCE H. GREENE, P.A.
 Attorney at Law
 320 North Second Avenue
 Sandpoint, Idaho 83864
 (208) 263-1255
 Fax (208) 265-2451
 I.S.B. #1817

CLERK OF DISTRICT COURT
 JEFFREY L. BELLNER
 DISTRICT
 2008 MAY -7 P 2:17

CLERK OF DISTRICT COURT
 DEPUTY *Ja*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
 MAGISTRATE DIVISION

STATE OF IDAHO,)

Plaintiff,)

vs.)

MATTHEW G. SCOTT,)

Defendant.)

CASE NO. CR 2008-00097

ORDER

Pursuant to the parties' stipulation and wavier of speedy trial the May 8th, 2008 trial is vacated and ordered reset after the motion to suppress.

DATED AND SIGNED this 7th day of May, 2008.

[Signature]
 Magistrate Judge

CERTIFICATE OF MAILING

I hereby certify that on the 7 day of May, 2008, a true and correct copy of the foregoing document was mailed, postage prepaid, addressed to:

Bruce H. Greene
Attorney at Law

Via Facsimile: 265-2451

Sandpoint City Prosecutor

Via Facsimile: 255-1368

MARIE SCOTT
CLERK OF COURT

BY


Deputy

BRUCE H. GREENE, P.A.
Attorney at Law
320 North Second Avenue
Sandpoint, Idaho 83864
(208) 263-1255
Fax (208) 265-2451
I.S.B. #1817

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 MAY -7 P 1:49

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY *ja*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,)

Plaintiff,)

vs.)

MATTHEW G. SCOTT,)

Defendant.)

CASE NO. CR 2008-00097

MOTION AND NOTICE OF HEARING

Defendant moves the Court to suppress the evidence gathered against him. The warrantless, extraterritorial stop of the Defendant was lacking in adequate legal cause, was contrary to I.C. 67-2337(2), (3), and (5), and in violation of Article 1§17 and the 4th Amendment.

Notice is given that oral argument will be given on the 23rd day of May, 2008 at

11:00 a.m.

DATED AND SIGNED this 7 day of May, 2008.

Bruce H. Greene

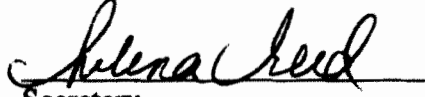
BRUCE H. GREENE, P.A.
Attorney for Defendant

CERTIFICATE OF MAILING

on this 7 I hereby certify that a true and correct copy of the foregoing was hand delivered,
day of May, 2008.

City Prosecuting Attorney
1123 Lake Street
Sandpoint, Idaho 83864

Via Facsimile: 255-1368


Secretary

MOTION AND NOTICE OF HEARING - 2

MAY-22-2008 14:51

BRUCE H. GREENE, P.A.

P.02

BRUCE H. GREENE, P.A.
Attorney at Law
320 North Second Avenue
Sandpoint, Idaho 83864
(208) 263-1255
Fax (208) 265-2451
L.S.B. #1817

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2008 MAY 22 P 4:39

MARIE SCOTT
CLERK DISTRICT COURT

m
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW G. SCOTT,

Defendant.

CASE NO. CR 2008-00097

STIPULATION

Due to the unavailability of the State's officer the parties stipulate that the May 23rd, 2008
hearing be vacated and reset to the 5th day of June, 2008 at 2:30 p.m.

DATED AND SIGNED this 22nd day of May, 2008.

Lori Meulenberg
LORI MEULENBERG
Prosecuting Attorney

Bruce H. Greene
BRUCE H. GREENE, P.A.
Attorney for Defendant

STIPULATION - 1

BRUCE H. GREENE, P.A.
 Attorney at Law
 320 North Second Avenue
 Sandpoint, Idaho 83864
 (208) 263-1255
 Fax (208) 265-2451
 I.S.B. #1817

STATE OF IDAHO
 County of Bonner
 FILED 5-23-08
 AT 1030 O'clock A M
 CLERK [Signature] DISTRICT COURT
 Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
 MAGISTRATE DIVISION

STATE OF IDAHO,)	
)	
Plaintiff,)	
)	CASE NO. CR 2008-00097
vs.)	
)	ORDER
MATTHEW G. SCOTT,)	
)	
<u>Defendant.</u>)	

Pursuant to the parties stipulation the May 23rd, 2008 hearing is hereby vacated and reset for the 5th day of June, 2008 at 2:30 p.m.

DATED AND SIGNED this ²³~~22~~nd day of May, 2008.

[Signature]
 Magistrate Judge

CERTIFICATE OF MAILING

I hereby certify that on the 23 day of May, 2008, a true and correct copy of the foregoing document was mailed, postage prepaid, addressed to:

Bruce H. Greene *mg*
Attorney at Law
VIA FACSIMILE: 265-2451

City Prosecutor's Office *mg*
VIA FACSIMILE: 255-1368

MARIE SCOTT
CLERK OF COURT

BY

mg
Deputy Clerk

ORDER - 2

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

COURT MINUTES

**JUDGE: MICHAEL J GRIFFIN
DIVISION: MAGISTRATE COURT
CLERK: SUSAN AYERLE**

**CASE NO. CR-2008-97
DATE: JUN 5 2008 TIME: 2:30 PM
CD: 08-80**

STATE OF IDAHO

vs MATTHEW GILBERT SCOTT

Plaintiff / Petitioner

Defendant / Respondent

Atty: SANDPOINT CITY PROSECUTOR

Atty: BRUCE GREENE

**SUBJECT OF PROCEEDINGS
CHARGE**

MOTION TO SUPPRESS

INDEX	SPEAKER	PHASE OF CASE
244		Calls Case
		Present: DEF WITH BRUCE GREENE; LORI MEULENBERG FOR STATE
	J	EVIDENCE
	BG	YES
	BG	WARRANTLESS STOP, EXPECT STATE WOULD PROCEED FIRST
	J	I DON'T HAVE ANYTHING STIPULATE
	LM	YES
	LM	ALL
	CLERK	SWEARS OFFICER
	LM	DIRECT ONLY ISSUE BEFORE COURT IS ACTUAL STOP AND WHERE STOP OCCURRED
	BG	CORRECT
	LM	DIRECT
	DH	DERRICK HAGSTROM SANDPOINT PD POST CERTIFIED DESCRIBES STOP - IN SANDPOINT NEAR BOYER WITHIN CITY LIMITS ON PATROL DREW ATTENTION TO VEHICLE TRAVELING WEST BOUND ON PINE, RECALLED SEEING VEHICLE DOWNTOWN EARLIER THAT EVENING WESTBOUND DIVISION AND PINE HE WAS IN FRONT OF ME STOPPED AT SIGN - VISUALLY ESTIMATED SPEED AT 35 MPH RADAR AT 32 MPH STILL ACCELERATING DESCRIBES RADAR; CALIBRATION AFTER LOCKED ON ATTEMPTED TO CATCH UP TO VEHICLE SNOW ON GROUND AND SNOWING DODGE PICKUP WITH SNOWMOBILES IN BACK I WAS IN CROWN VICTORIA - DIFFICULT TO CATCH UP TO HIM PROCEEDED WITH TRAFFIC STOP CAUGHT UP WITH HIM - CLOSE ENOUGH SOUTHBOUND ON SYRINGA HEIGHTS NOT IN SANDPOINT CITY LIMITS CONCERNED AT THAT POINT MORE THAN SPEEDING - SUSPICIOUS COULDN'T BE CERTAIN WHO WAS DRIVING VEHICLE SUSPICIOUS OTHER POSSIBILITIES

		<p>WHEN SAW VIOLATION IN CITY LIMITS LOCKED ON IN 1500 BLOCK OF PINE STREET WITHIN CITY LIMITS; SEVERAL HUNDRED MORE YARDS/8TH OF MILE BEFORE EDGE OF TOWN 25 MPH ZONE CONCERN FOR OTHERS ON ROADWAY HE COULD POSSIBLY COME IN CONTACT WITH DOWN THE ROAD PASSENGERS WERE IN VEHICLE DISTANCE TO CATCH UP – PINE TO SYRINGA UNTIL CLOSE ENOUGH TO INITIATE STOP; DIDN'T WANT TO TURN ON OVERHEAD LIGHTS PRIOR ABLE TO CATCH HIM AS HE TURNED OFF ONTO SYRINGA DEER IN ROADWAY HAD ACTIVATED LIGHTS WHEN CAME AROUND ON SYRINGA PROCEEDED WITH STOP AND DUI INVESTIGATION</p>
251	LM	NOTHING FURTHER
	J	OTHER QUESTIONS
	LM	NO
	J	GO AHEAD SIR
		MARK DEFENDANT'S A (MAP OF SANDPOINT)
	BG	CROSS
	DH	MARK IN PINE STREET FROM PINE AND BOYER TO POINT OF STOP
254	BG	RR BRIDGE MARKS CITY LIMITS -
	DH	THERE IS {CIRCLES ON MAP}
	BG	OFFER EXHIBIT A
	LM	NO OBJECTION
	J	ADMIT DEFENSE EXHIBIT A
	BG	RESUMES CROSS
	DH	<p>FIRST LOCATED HOW FAR BEHIND – DON'T RECALL NO OTHER VEHICLES – WITHIN A BLOCK SAW HIM STOP AND STOPPED MYSELF I CAME UP BEHIND HIM AS HE PULLED AWAY DIDN'T ACTIVATE LIGHTS – HADN'T COMMITTED ANY CRIME AT THAT POINT AS HE GOT OUT FEW HUNDRED FEET – HE ACCELERATED AWAY FROM STOP SIGN FASTER THAN NORMAL RATE RADAR 1500 BLOCK OF PINE ST, EAST OF HALEY COUPLE HUNDRED FEET, IF THAT 25MPH TURNS TO 35 MPH THIS SIDE OF RR BRIDGE SHIFTS OVER TO 35 MPH DISTANCE WISE, FROM CITY LIMITS TO ACTUAL STOP – NOT CERTAIN HOW FAR EXACTLY; WOULDN'T EVEN ESTIMATE, MAY BE SCALE ON MAP</p>
258	BG	NOTHING FURTHER
	LM	REDIRECT
	DH	<p>INDICATE ON MAP LOCATION OF TRAIN BRIDGE MARKED LONGER THAN RESIDENTIAL BLOCKS DESCRIBES BUSINESS AND RESIDENTIAL AREAS ON PINE BETWEEN POINT OF VIOLATION AND STOP VIOLATION HAPPENED NOT AT VERY END OF CITY LIMITS MARK VIOLATION AND CITY LIMIT ON MAP IDENTIFIES DEFENDANT AS DRIVER TRAINED TO WAIT TO ACTIVATE LIGHTS – IF YOU CAN WAIT UNTIL CLOSER TO VEHICLE, REDUCE CHANGE OF VEHICLE FLEEING WHAT DID IN THIS SITUATION</p>
301	LM	NOTHING FURTHER
	BG	RECROSS
	DH	FIRST TESTIMONY STARTED ACCELERATING FROM STOP SIGN

		<p>THAT WAS A CLOSE UNTIL YOU PURSUED HIM OUTSIDE CITY CLOSER BUT HE WAS ACCELERATING NO REASON COULDN'T HAVE TURNED ON LIGHTS WHEN SAW SPEEDING – HAD REASON OTHERWISE WOULD HAVE TURNED THEM ON SIGNIFICANT DISTANCE BETWEEN MYSELF AND HIM POSSIBILITY OF HIM FLEEING VIDEO OF STOP TURNED ON LIGHTS ON SYRINGA – 400 FEET BEHIND HIM AT THAT POINT – DON'T RECALL, WITHIN A FEW HUNDRED FEET OF HIM HE PULLED RIGHT OVER – HE HAD DEER IN THE WAY</p>
303	BG	NO ADDITIONAL QUESTIONS
	J	EXCUSES WITNESS
	LM	NO FURTHER
	BG	CALLS DEF
	CLERK	SWEARS DEF
	MS/DEF	<p>MATT SCOTT, 22 YEARS OLD; CONSTRUCTION WORKER DRIVER OF DODGE PICKUP STOPPING AT DIVISION AND PINE SNOW STORM; DIDN'T EVEN NOTICE HIS VEHICLE UNTIL SYRINGA HEIGHTS SNOWING PRETTY HARD ACCELERATED TO 32 MPH – DISPUTE THAT – NO SPEED LIMIT CHANGES TO 35 MPH SHORT DISTANCE THEREAFTER DISTANCE FROM CITY LIMIT TO STOP – DRIVEN A FEW TIMES – DISTANCE FROM EDGE OF CITY LIMIT TO TURN OFF – AROUND A MILE SAW DEER CROSS IN FRONT OF ME – SPEED THE SAME ALL DOWN THE ROAD LIGHTS CAME ON 3 TO 4 HUNDRED FEET AS SOON AS LIGHTS CAME ON PULLED OVER TO SHOULDER</p>
306	BG	NO ADDITIONAL QUESTIONS
	LM	CROSS
	MS/DEF	<p>DID NOT MEASURE DISTANCE TO CITY LIMITS SNOW STORM THAT NIGHT</p>
306	LM	NOTHING FURTHER
	BG	NO FURTHER WITNESSES
307	BG	<p>ARGUMENT TITLE 67 FRESH PURSUIT; INFRACTION INSIDE CITY LIMITS, DOESN'T FRESH PURSUIT NO LIGHTS TITLE 67 SPECIFIC AS TO WHEN OFFICER IS AUTHORIZED TO EXCEED OR LEAVE CITY LIMITS HAD HIS LIGHTS ON IN CITY LIMITS – CAN'T FLEE CITY WHILE BEING PURSUED HERE NOT THE CASE WASN'T AWARE OF OFFICER UNTIL OUT OF CITY BY A MILE NO EXCEPTIONS ALLEGED OR PROVEN BY STATE – CITES TITLE 19 CHAPTER 7 FRESH PURSUIT CAN NOT ROUTINELY ENFORCE OUTSIDE OF JURISDICTION VIOLATION OF STATUTE OTHER PLED PORTION IS SUB 5 MANDATES ONCE THERE IS A STOP ; LEAVING THE CITY THE MATTER HAS TO BE REPORTED TO THE LAW ENFORCEMENT AGENCY HAVING JURISDICTION AND RELINQUISH CONTROL HAS NOT OCCURRED IN THIS INSTANCE – COUNTY NOT INVOLVED</p>
310	LM	<p>NO DISPUTE ABOUT FACTS VIOLATION OCCURRED IN CITY NO DISPUTE INFRACTION VIOLATION OCCURRED SPEEDING VIOLATION</p>

		PROCEEDS OUT OF CITY LIMITS DUE TO ROAD CONDITIONS DEFENSE NEGLECTED TITLE 19 XXX – FRESH PURSUIT SHALL HAVE AUTHORITY TO PURSUE AND ARREST ANYWHERE IN STATE AUTHORIZATION FOR OFFICER TO FOLLOW, STOP, AND ARREST NO INDICATION ANY KIND OF DISMISSAL EVEN IF OUTSIDE JURISDICTION NO AUTHORITY TO DISMISS PURPOSES OF HAS TO TURN OVER TO COUNTY – DUI IS TREATED AS FELONY FOR MATTERS OF ARREST – CAN BE OUTSIDE OF JURISDICTION 67 2337
312	J	REBUTTAL
	BG	REBUTTAL TITLE 67 SPECIFICALLY APPLICABLE "FRESH PURSUIT" DEFINED IN TITLE 19 CHOSE TO LEAVE CITY LIMITS OVER A MILE – THAT IS NOT FRESH PURSUIT OTHERWISE NO LIMITS AT ALL SUB 3 COVERS – SHALL NOT IMPLY CAN NOT ROUTINELY PERFORM
313	J	TAKE UNDER ADVISEMENT ISSUE WRITTEN OPINION AS SOON AS POSSIBLE OTHER MATTERS IN THIS CASE
	LM	NO
	BG	WRITTEN BRIEFING
	J	NO
313		END

RETURN DEF EXHIBIT A TO STATE, NOT DEFENSE PER JUDGE MJG

CLERK OF DISTRICT COURT
BONNER COUNTY

2008 JUN -6 P 3:19

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

DEPUTY

STATE OF IDAHO,)
Plaintiff,)
)
vs.)
)
MATTHEW G. SCOTT,)
Defendant.)
_____)

CASE NUMBER: CR2008-097

ORDER GRANTING MOTION TO
SUPPRESS

Officer Hagstrom with the Sandpoint City Police Department was on patrol during the early morning hours of Saturday, December 29, 2007. There was approximately 4 inches of new snow on the roadways and it was snowing hard at the time. Officer Hagstrom pulled up behind a pickup at the corner of Division Street and Pine Street in the City of Sandpoint.

The pickup had stopped at the stop sign at Division Street. It then crossed Division Street and accelerated. Officer Hagstrom remained parked at Division Street and used his radar to confirm that the pickup was traveling at 32 miles per hour in a posted 25 mile per hour zone. The officer had seen the pickup parked in downtown Sandpoint earlier, but did not know who owned the pickup, nor how many people were in the pickup at the time he observed it on Pine Street.

The pickup had two snowmobiles in the bed of the pickup and had no difficulty traveling on the snowy roads. The officer did not observe any erratic driving.

The officer was driving a rear-wheel drive patrol car and did have difficulty

accelerating to catch up with the pickup.

The officer observed the pickup speeding well within the city limits of Sandpoint, followed the pickup for a significant distance within the city limits, and continued to follow the pickup (separated by a substantial distance) until the pickup was approximately one mile outside the city limits of Sandpoint and turning onto Syringa Road. At that time the officer turned on his vehicle's emergency lights. The pickup stopped immediately. During the ensuing contact between the officer and the defendant, who was the driver of the pickup, the officer concluded that the defendant was under the influence of alcohol and arrested the defendant. The officer did not contact a county deputy.

The defendant is not contesting that after the stop the officer had probable cause to believe the defendant was operating a motor vehicle while under the influence of alcohol, but is arguing that the officer did not have jurisdiction to follow the pickup outside the City of Sandpoint and stop the vehicle for the traffic infraction of speeding.

Pursuant to Idaho Code 67-2337 a police officer has authority to pursue a vehicle outside of his geographical jurisdiction if a) he has been requested to do so by the proper person in charge of that jurisdiction, or b) he has probable cause to believe a felony (or DUI) is being committed by the driver of the vehicle being pursued, or the vehicle poses an immediate threat of serious bodily harm or death to any person (including the driver of the vehicle being followed), or c) the officer is in "fresh pursuit" of the vehicle. "Fresh pursuit" includes both the common law definition of "fresh pursuit" and the definition of that phrase in Idaho Code 19-705.

At the time the officer pursued the defendant's pickup he did not have probable

cause to believe a felony or DUI had been or was being committed, nor was there evidence to conclude that any person was in immediate danger of death or serious bodily harm. There were no other vehicles on the road and the pickup was not being driven erratically. The only evidence was that it was being driven 7 to 10 miles over the posted speed limit of 25 miles per hour in snowy conditions.

Was the officer in "fresh pursuit"? At common law that phrase is synonymous with immediate "pursuit". Under Idaho Code 19-705 that phrase means "pursuit" of someone believed to have committed a felony (or DUI) without unreasonable delay. There was no evidence of a felony or DUI.

Idaho Code 19-701A provides in part that a police officer "in fresh pursuit" of someone who has committed...a traffic infraction in this state in the presence of the officer...shall have authority to "pursue", arrest and hold, or cite the person anywhere in the state.

There is a difference between "pursing" a vehicle and "following" a vehicle.

In this case if the officer had turned his emergency lights on while both he and the defendant's vehicle were within the city limits of Sandpoint (there was ample opportunity to do that), the officer could be fairly said to be "pursuing" the defendant and the defendant would be put on notice that he was being "pursued" and being ordered to stop his vehicle. In this case the officer did not turn on his emergency lights, nor in any other way indicate to the defendant that he was "pursuing" him and ordering him to stop, until they were approximately one mile outside the city limits. The court concludes that while the officer was "following" the defendant's vehicle he was not in "pursuit" of that vehicle.

The court concludes that the officer was not exercising any authority under Idaho Code 19-701A or Idaho Code 67-2337.

Can the officer's stop of the defendant's vehicle be justified as a proper stop by a private citizen? If a private citizen could have made the same stop as the officer, then whether or not the officer was acting under Idaho Code 19-701A or 67-2337 would be irrelevant.

Idaho Code 19-604 permits a private citizen to arrest another citizen if a public offense occurs in their presence. Speeding is an infraction and is defined as a civil public offense. Since an infraction is not defined as a criminal public offense the court concludes that a private citizen could not have stopped the defendant for the observed act of exceeding the posted speed limit.

Therefore, the defendant's Motion to Suppress is granted. The state may not use in its case in chief any evidence obtained during and after the stop of the defendant by Officer Hagstrom on the early morning hours of December 29, 2007.

Dated this 6th day of June, 2008.


MAGISTRATE JUDGE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 6th day of June 2007:

Bruce Greene via fax & USPS
Sandpoint City PA


Deputy Clerk

Office of the City Attorney
William Herrington (ISBN 1844)
Lori Meulenberg (ISBN 4313)
City of Sandpoint
1123 Lake Street
Sandpoint, ID 83864
(208) 263-0534
FAX (208) 255-1368

STATE OF IDAHO
COUNTY OF BONNER
JUDICIAL DISTRICT

2008 JUL -3 A 11: 49

MATTHEW SCOTT
DISTRICT COURT
CMB

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO, EX REL CITY
OF SANDPOINT,

Plaintiff/Appellant,

vs.

Matthew G. Scott,

Defendant/Respondent.

Case No. CR 08-0000097

NOTICE OF APPEAL

TO: Bruce Greene, Attorney for the Defendant, and to the Clerk of the above-entitled Court:

1. Title of the action or proceedings:

State v. Matthew Scott

2. Title of the Court from which appeal is taken:

Magistrate Division, First Judicial District of the State of Idaho, in and for County of Bonner

3. The number assigned to the action or proceedings by trial court:

CR-2008-0000097

4. Title of the court to which appeal is taken:

District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner

5. Order Granting Motion to Suppress entered by Honorable Judge Griffin, Magistrate, dated June 6, 2008.

NOTICE OF APPEAL

6. Statement as to whether the appeal is taken upon matters of law or upon matters of fact, or both:

Matters of law.

7. Statement as to whether the testimony and proceedings of the original trial or hearing were recorded or reported, together with an identification of the method of recording or reporting and the name of the party or person in whose possession such recording or reporting is located:

Tape recording in the possession of the Bonner County Clerk.

8. State the issues on appeal which the appellant then intends to assert in the appeal; provided, such statement may be filed separately within fourteen (14) days after the filing of the notice of appeal and any such list of issues an appeal shall not prevent the appellant from asserting other issues on appeal thereafter discovered by the appellant.

Issues are as follows:

- a. Does I.C. 19-701A require a police officer to immediately turn on his overhead lights in order to stop a vehicle that is about to exit his jurisdiction if the officer observed a traffic violation occur within his jurisdiction.

9. I hereby certify that this Notice of Appeal has been served upon Bruce Greene, Attorney, by depositing a true and correct copy of the foregoing in the United States Postal Service, postage prepaid, this 2nd day of July, 2008 addressed to:

Bruce Greene
Attorney at Law
320 N. Second
Sandpoint, Idaho 83864

DATED this the 2nd day of July 2008.

Lori T. Meulenberg
Lori Meulenberg
Sandpoint City Prosecutor

OFFICE OF THE CITY ATTORNEY
City of Sandpoint
1123 Lake Street
Sandpoint, Idaho 83864
(208) 263-0534
FAX (208) 255-1368

STATE OF IDAHO)
County of Bonner) ss
FILED 7-9-08
AT 1:20 O'Clock P M
CLERK, DISTRICT COURT
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

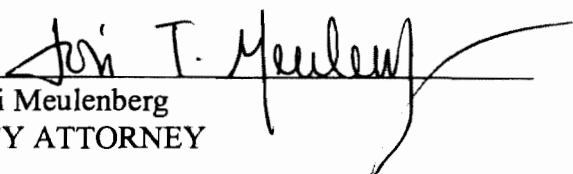
STATE OF IDAHO,	}	
Ex Rel City of Sandpoint	}	
	}	Case No. CR-08-000097
Plaintiff,	}	
	}	
-vs-	}	MOTION FOR ORDER TO
	}	STAY PROCEEDINGS
Matthew G. Scott,	}	
	}	
Defendant.	}	

COMES NOW City of Sandpoint and moves the Court for an Order to stay further proceedings in the above-entitled matter.

THE BASIS of the motion is that the State has filed an appeal on the Order Granting the Motion to Suppress signed on June 6, 2008. The State is unable to proceed until a ruling is made on the appeal.

THEREFORE the State would move the court to vacate the jury trial scheduled on July 10, 2008 and stay further hearings until such time.

DATED this 9th day of July, 2008.


Lori Meulenberg
CITY ATTORNEY

STATE OF IDAHO
County of Bonner } ss
FILED 7-9-08
AT 306 O'clock 2 M
CLERK, DISTRICT COURT
Deputy mm

OFFICE OF THE CITY ATTORNEY
City of Sandpoint
1123 Lake Street
Sandpoint, Idaho 83864
(208) 263-0534
FAX (208) 255-1368

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,	}	
Ex Rel City of Sandpoint	}	
	}	Case No. CR-08-0000097
Plaintiff,	}	
	}	
-vs-	}	ORDER
	}	
Matthew G. Scott,	}	
	}	
<u>Defendant.</u>	}	

BASED UPON THE foregoing Motion and Good Cause there Appearing,

NOW THEREFORE it is hereby Ordered that hearings for Bonner County Case
No. CR-08-000097 are stayed.

IT IS FURTHER Ordered that the jury trial scheduled for July 10, 2008 is hereby
vacated.

DATED this 9 day of July, 2008.

Bd Bd
MAGISTRATE OF THE DISTRICT COURT

CERTIFICATE OF MAILING

I do hereby certify that a true and correct copy of the foregoing instrument was hand delivered/mailed, postage prepaid this 9th day of July 2008 and was addressed to:

Bruce Greene
Attorney at Law
320 N. Second
Sandpoint, Idaho 83864

Via fax 265-2451

Lori Meulenberg- City Prosecutor
Courthouse Mail
Sandpoint, Idaho 83864

Via fax 255-1368

m. Zepck

STATE OF IDAHO
COUNTY OF BONNER
IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,

Plaintiff(s),

vs.

MATTHEW SCOTT,

Defendant.

2008 OCT 10 A 9:10

CASE NO CR 2008-97 MARIE
CLERK DISTRICT COURT
ORDER OF REASSIGNMENT *ap*

IT IS HEREBY ORDERED that the above matter is reassigned to the **Honorable John T. Mitchell**, District Judge, for the disposition of any pending and further proceedings.

IT IS FURTHER ORDERED that the following alternate judges are hereby assigned to preside in this case: Charles Hosack, Fred M. Gibler, Lansing Haynes, John T. Mitchell, James R. Michaud, and George R. Reinhardt, III.

DATED this 10 day of October, 2008.

John Patrick Luster
JOHN PATRICK LUSTER
Administrative District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 10 day of Oct, 2008, a true and correct copy of the foregoing was sent via facsimile to the following:

Bruce Greene
Attorney for Defendant
via fax to 265-2451

Office of City Attorney
Lori Neulenberg
via fax to 255-1368

CLERK OF THE DISTRICT COURT

By *A. Phillips*
Deputy Clerk

ORDER OF REASSIGNMENT: 1
CV

BRUCE H. GREENE, P.A.
Attorney at Law
320 North Second Avenue
Sandpoint, ID 83864
(208) 263-1255
(208) 265-2451 Fax
I.S.B. #1817

STATE OF IDAHO
COUNTY OF BONNER
JUDICIAL DISTRICT

2009 NOV 20 A 10:04

CLERK DISTRICT
9

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	CASE NO. CR 2008-00097
vs.)	
)	
MATTHEW G. SCOTT,	)	MOTION TO WITHDRAW
)	
<u>Defendant.</u>)	

Counsel for Mr. Scott moves the Court for permission to withdraw from further representation. Communication has broken down between counsel and client, who also has failed to pay the accumulated balance of fees due. Additionally a potential conflict of interest due to an unrelated civil matter appears to becoming an issue, also requiring withdrawal.

**Notice is given matter will be heard on the 16th day of December, 2008 at 2:00 p.m.
in front of the Honorable Don Swanstrom.**

DATED AND SIGNED this 19 day of November, 2008.



BRUCE H. GREENE, P.A.
Withdrawing Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 19 day of November, 2008, a true and correct copy of the foregoing document was delivered, via the method indicated below, addressed to:

Matthew Scott
845 Evergreen Road
Sagle, Idaho 83860

U.S. Mail, postage prepaid

Rami Amaro
Special Deputy Attorney General
Post Office Box 796
Hayden, Idaho 83835

U.S. Mail, postage prepaid

Lori Meulenberg
Sandpoint City Prosecutor
1123 Lake Street
Sandpoint, Idaho 83864

U.S. Mail, postage prepaid


Secretary

OFFICE OF THE CITY ATTORNEY
William Herrington (ISBN 1844)
Lori Meulenberg (ISBN 4313)
City of Sandpoint
1123 Lake Street
Sandpoint, Idaho 83864
(208) 263-0534
FAX (208) 255-1368

2008 DEC 12 P 1:34

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,

Ex Rel City of Sandpoint,

Plaintiff,

-vs-

Matthew G. Scott,

Defendant.

Case No. CR-08-0097

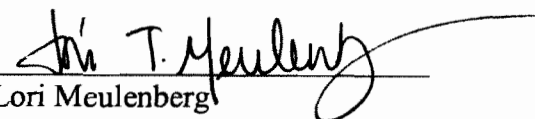
STATE'S OBJECTION
TO WITHDRAWAL;
AND
WAIVER OF APPEARANCE

COMES NOW, Lori Meulenberg, the Sandpoint City Prosecuting attorney, and objects to Bruce Greene's motion to withdraw as defense counsel in this matter. Mr. Greene brought the original motion to suppress/dismiss that is currently on appeal by the State in this matter. Briefs are due in January 2009.

The State requests that the motion be denied.

Please accept the State's waiver of appearance for the motion hearing on December 16, 2008. The prosecutor will be attending a conference in Washington State.

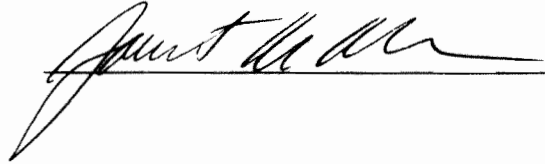
Dated this 12th of Dec, 2008.


Lori Meulenberg
Sandpoint City Attorney

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was hand delivered/mailed, postage prepaid, this 12th day of Dec. 2008, and was addressed to:

Bruce Greene
Attorney at Law
320 N. Second Ave.
Sandpoint ID 83864



Dear Judge Mitchell

Case No- 01 2008-0000091

I Matt Scott would like to request
on the hearing set for January 6, 2009.

STATE OF ARIZONA
COUNTY OF GAVAZZINI
FIRST JUDICIAL DISTRICT

Request
JAN 5 P 2 01

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY
Bryce Greene

is due to the lack of time from when I
withdrew from my representation. I have made an effort
to find legal counsel in the time allotted yet Christmas
and New Years left me with little time to find the
correct attorney. If I could request a minimum of seven
days or more to find an attorney and get them caught
up with the case it would be greatly appreciated.

Thank you for your time

Matt Scott

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2009 JAN 12 A 10:23

MARIE SCOTT
CLERK DISTRICT COURT
ap
DEPUTY

BRUCE H. GREENE, P.A.
Attorney at Law
320 North Second Avenue
Sandpoint, ID 83864
(208) 263-1255
(208) 265-2451 Fax
I.S.B. #1817


IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	CASE NO. CR 2008-00097
vs.)	
)	
MATTHEW G. SCOTT,	)	MOTION TO WITHDRAW
)	
Defendant.)	

Counsel for Mr. Scott moves the Court for permission to withdraw from further representation. Communication has broken down between counsel and client, who initially had failed to pay the accumulated balance of fees due. Additionally a conflict of interest due to an unrelated civil matter has become an issue, also requiring withdrawal.

Notice is given matter will be heard on 27th day of January, 2009, at 4:00 p.m. in front of the Honorable John Mitchell at the Kootenai County Courthouse with Mr. Greene appearing telephonically.

DATED AND SIGNED this 7 day of January, 2009.



BRUCE H. GREENE, P.A.
Withdrawing Attorney

CERTIFICATE OF MAILING

I hereby certify that on the 8 day of January, 2008, a true and correct copy of the foregoing document was delivered, via the method indicated below, addressed to:

Matthew Scott
845 Evergreen Road
Sagle, Idaho 83860

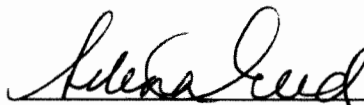
U.S. Mail, postage prepaid

Rami Amaro
Special Deputy Attorney General
Post Office Box 796
Hayden, Idaho 83835

U.S. Mail, postage prepaid

Lori Meulenberg
Sandpoint City Prosecutor
1123 Lake Street
Sandpoint, Idaho 83864

U.S. Mail, postage prepaid


Secretary

OFFICE OF THE CITY ATTORNEY
Lori Meulenberg (ISBN 4313)
City of Sandpoint
1123 Lake Street
Sandpoint, Idaho 83864
(208) 263-0534
FAX (208) 255-1368

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2009 JAN 22 P 3 11

MARIE SCOTT
CLERK DISTRICT COURT

DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,

Ex Rel City of Sandpoint,

Plaintiff,

-vs-

MATTHEW G. SCOTT,
Defendant.

Case No. CR-08-0000097

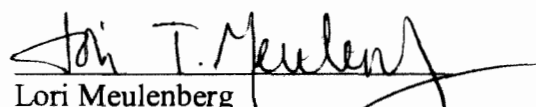
STATE'S OBJECTION
TO DEFENSE ATTORNEY'S
REQUEST FOR WITHDRAWAL;
AND STATE'S
WAIVER OF APPEARANCE

COMES NOW, Lori Meulenberg, the Sandpoint City Prosecuting attorney, and objects to Bruce Greene's motion to withdraw as defense counsel in this matter. Mr. Greene brought the original motion to suppress/dismiss that is currently on appeal by the State in this matter. The State has filed its brief, and the Defense brief is due the first week in February.

The State requests that the motion be denied.

Please accept the State's waiver of appearance for the motion hearing on Jan. 27, 2009.

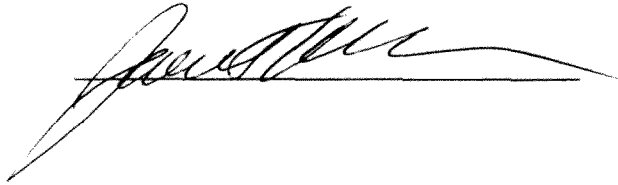
Dated this 22nd of Jan, 2009.


Lori Meulenberg
Sandpoint City Attorney

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was hand delivered/mailed, postage prepaid, this 22nd day of Jan. 2009, and was addressed to:

Bruce Greene
Attorney at Law
320 N. Second Ave.
Sandpoint, Idaho 83864



*FAX to Judge Mitchell's office
@ 3:25pm on 1/22/09 JT*

Court Minutes:

Session: MITCHELL012709P
Session Date: 01/27/2009
Judge: Mitchell, John
Reporter: Vance, Keri

Division: DIST
Session Time: 07:54

Courtroom: Courtroom 8

Clerk:
Clerk: Jessica
Butler: Wanda

State Attorney(s): Brooks, Ken

Public Defender(s): Neils, Martin

Prob. Officer(s):

Court Interpreter(s):

Wanda Butler

Case #: 0004

Case number: SCV88-97BON

Plaintiff: Idaho, State of

Plaintiff Attorney:

Defendant: Scott, Matthew

Per. Attorney:

Co-Defendant(s):

State Attorney:

Public Defender:

Previous audio and annotations can be found in case: 0004

01/27/2009

15:09:42

Recording Started:

15:10:42

Case recalled

16:10:03

Judge: Mitchell, John

Mr. Green appearing by phone in Bonner County
case 08-97 on Motion to
withdraw pursuant to Rule 44 of ICR. Motion
doesnt reference that.

16:10:19

16:10:36

Add Ins: Green, Bruce
That is correct.

16:10:41

Judge: Mitchell, John
State of Idaho City Attorney has filed objection
to your withdrawal.

16:10:59

Add Ins: Green, Bruce
Have read it.

16:11:03

Judge: Mitchell, John
Doesnt look like anybody copied Mr. Marrow from
Attorney General.

16:11:19

Add Ins: Green, Bruce
Explain motion: I represented this individual
at both BAC and D.C. Council.

16:11:35

after motion hearing. Motion in an
unrelated civil matter.

16:11:49

Scott's civil council was a conflict. I
had represented some

16:12:06

individuals that Mr. Scott was against.

16:12:27

Hence the motion to withdraw
based on conflict, and his failure to stay
in contact and not pay

16:12:43

his bill. He did pay and provided the
updated address. I withdrew the

16:12:58

ethical conflict. I did not know on the BAC
case already as well.

16:13:14

the City doesnt want me to withdraw - but I
dont have a choice.

16:13:26

Judge: Mitchell, John
Who is Bar Counsel?

16:13:33

Add Ins: Green, Bruce
His name escapes me right now - I can look it up. He
just gave me a phone number.

16:13:50

- he didnt send written notice on it - in
December - Dont have the specific

16:14:08

date of phone call. I spoke to Mr. Scott (my

16:14:30 client) He understands but doesn't want to hire new counsel. The funds and address is not an issue now.

16:14:47 **Judge: Mitchell, John**
Did you discuss these reasons with counsel for the state.

16:15:01 **Add Ins: Green, Bruce**
I did tell the City attorney that. Technical Conflict to continue and the

16:15:17 didn't want to delay matter. I understand, I spoke to Bar Counsel and he said

16:15:32 there is a conflict because the Scotts father deeded them property.

16:15:49 **Judge: Mitchell, John**
I will grant motion - present an affidavit that explains what day it was.

16:16:02 phone conversation, with counsel at Bar Counsel, their statement and /or

16:16:21 opinion. And an order compelling you to withdraw and a copy going to your

16:16:31 client at his address and a copy of mailing that madam clerk can

16:16:43 out and Ms. Mullinberg and giving your client 20 to either appear

16:17:01 person pro se or to have new counsel appear - if neither of

16:17:18 occur this appeal will be dismissed pursuant to IRC 83 and specifically

16:17:53 His appeal will be dismissed unless one of these things happen in writing

16:18:08 with Bonner County.

16:18:13 **Add Ins: Green, Bruce**
Ok - will do so. Spoke to him today. I will make him aware of ramifications.

16:18:32 **Judge: Mitchell, John**
I will sign order upon receipt of those. Copy of Ms. Mullinberg.

16:19:16 **Stop recording**
(On Recess)

16:19:22

Recording Started:

16:19:23

Record
Sest, Matthew

16:19:26

Stop recording

BRUCE H. GREENE, P.A.
Attorney at Law
320 North Second Avenue
Sandpoint, Idaho 83864
Telephone: (208) 263-1255
Fax: (208) 265-2451

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2009 FEB -2 P 4 05

MARIE SCOTT
CLERK DISTRICT COURT
DEPUTY

January 29, 2009

Honorable John Mitchell
Kootenai County Courthouse
PO Box 9000
Coeur d'Alene, Idaho 83816-9000

Re. *State of Idaho vs. Matthew Scott*
Bonner County Case No. CR 2008-00097

Judge,

Enclosed is the proposed order and my supporting affidavit. Assuming the same to be in order I do point out one discrepancy. You had commented that failure to appear would constitute grounds for dismissal of the appeal, but in that the State is the party who appealed the grant of the motion to suppress I felt that such would not constitute the sanction you'd intended. I accordingly left the order broader and referenced specifically the rule 83(s) which would allow dismissal or other orders as you might deem appropriate. I do not think that additional language violates the intent of your order. Please review and I will proceed with service either by certified mail or personal service as the need be.

Yours very truly,



Bruce H. Greene
Attorney at Law

BG/sr

Enclosure

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

MAINE SOCIETY
CLERK DISTRICT COURT
DEPUTY


STATE OF IDAHO,)
)
 Plaintiff,)
) CASE NO. CR 2008-00097
 vs.)
)
 MATTHEW G. SCOTT,) AFFIDAVIT
)
 Defendant.)

- 70 -

In any event bar counsel – who was responding to my earlier written inquiry regarding conflict – did confirm that my continued representation of both Mr. Scott and the other civil client would indeed constitute an ethic violation, unless both clients would agree to waive the conflict. Such was not feasible, especially given the time constraints.

I filed the 1st Motion to Withdraw on November 19th, 2008 and set it for hearing December 16th, 2008. It was mistakenly noted for hearing before the wrong judge and then reset for the past hearing on January 27th, 2009. I notified Mr. Scott of same at his then address of 845 Evergreen Road, Sagle, Idaho, 83860. He subsequently informed me his new address was/is 1102 A Chestnut Street, Sandpoint, Idaho, 83864.

DATED AND SIGNED this 29 day of January, 2009.



BRUCE H. GREENE, P.A.

Attorney at Law

CERTIFICATE OF MAILING


I hereby certify that on the 30 day of January, 2009, a true and correct copy of the foregoing document was delivered, via the method indicated below, addressed to:

Matthew Scott
845 Evergreen Road
Sagle, Idaho 83860

U.S. Mail, postage prepaid

Lori Meulenberg
Sandpoint City Prosecutor
1123 Lake Street
Sandpoint, Idaho 83864

U.S. Mail, postage prepaid


Secretary

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2009 FEB -2 P 4: 05

MADE
CLERK DISTRICT COURT
DEPUTY

BRUCE H. GREENE, P.A.
Attorney at Law
320 North Second Avenue
Sandpoint, ID 83864
(208) 263-1255
(208) 265-2451 Fax
I.S.B. #1817

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,)	
)	
Plaintiff,)	
	)	CASE NO. CR 2008-00097
vs.)	
	)	ORDER AUTHORIZING
MATTHEW G. SCOTT,	)	WITHDRAWAL
)	
<u>Defendant.</u>)	

This matter came on for telephonic hearing on January 27th, 2009. The Court has considered the parties' position and the affidavit by counsel.

Good cause appearing, and pursuant to I.C.R. 44.1, defense counsel Bruce H. Greene is hereby allowed to withdraw as attorney of record.

The Defendant, Matthew G. Scott, is hereby notified that he has twenty days from the date of this order to either have new counsel file written appearance on his behalf, or to so file written notice himself of his appearance and readiness to appear pro-se.

He is further notified that if he does not file such written appearance either through counsel or pro-se then such shall constitute grounds for sanctions such as dismissal of appeal, prohibition on filing argument, and/or such other sanctions as permitted by I.R.C.P. 83(s), all of which may be done without further notice or hearing.

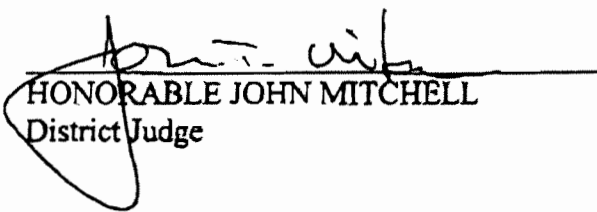
This order shall be served upon Mr. Scott by either personal service or by certified mail to

his last known address:

1102 A Chestnut Street
Sandpoint, Idaho 83864

and proof thereof filed with the Court.

DATED AND SIGNED this 2nd day of February, 2009.


HONORABLE JOHN MITCHELL
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 2 day of February 2009, a true and correct copy of the foregoing document was delivered, via the method indicated below, addressed to:

Bruce H. Greene
Attorney at Law
320 North Second Avenue
Sandpoint, Idaho 83864

U.S. Mail, postage prepaid

via fax 265-2451

Lori Meulenberg
Sandpoint City Prosecutor
1123 Lake Street
Sandpoint, Idaho 83864

U.S. Mail, postage prepaid

via fax 255-1368


Secretary

OFFICE OF THE CITY ATTORNEY
Lori Meulenberg (ISBN 4313)
City of Sandpoint
1123 Lake Street
Sandpoint, Idaho 83864
(208) 263-0534
FAX (208) 255-1368

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2009 FEB -5 P 3:18

MARIE SCOTT
CLERK DISTRICT COURT
ap
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER
MAGISTRATE DIVISION

STATE OF IDAHO,

Ex Rel City of Sandpoint,

Plaintiff/Appellant,

-vs-

MATTHEW G. SCOTT,

Defendant/Respondent.

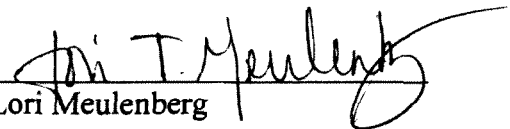
Case No. CR-08-0000097

STATE'S OBJECTION
TO DISMISSAL OF APPEAL

COMES NOW, Lori Meulenberg, the Sandpoint City Prosecuting attorney, and objects to the future dismissal of the appeal in this case should the defendant fail to file a written appearance through counsel or *pro se*.

The appeal was filed by the State, with the Defendant as Respondent. Dismissal of the appeal based on inaction of the Defendant would not be in the interest of justice. (This motion is based upon the language of the order dated Feb. 2, 2009.)

Dated this 3rd of February, 2009.


Lori Meulenberg
Sandpoint City Attorney

CERTIFICATE OF MAILING

NOTICE OF OBJECTION . . .1

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 4 day of February 2009, and was addressed to:

Matthew G. Scott
1102 A Chestnut Street
Sandpoint ID 83864



Court Minutes:

Session: MITCHELL000209A

Session Date: 09/02/2009

Judge: Mitchell, John

Reporter: Foland, Julia

Division: DIST

Session Time: 07:37

Courtroom: Courtroom8

Clerk(s): Clausen, Jeanne

State Attorney(s): Wick, Ann

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Jeanne Clausen

Case ID: 0001

Case number: 0002002-97

Plaintiff: State of Idaho

Plaintiff Attorney:

Defendant: Bond, Matthew

Pers. Attorney:

Co-Defendant:

State Attorney:

Public Defender:

09/02/2009

08:12:53

Recording started

08:12:53

Case called

08:13:05

Judge: Mitchell, John

Calls case, no parties present for the state;

Ms. Mueller for the appellant

08:14:01

appeal from Judge Griffin's decision; read
briefing and ready to proceed

08:15:02

Other: Blumentberg, Ms.

Specific code section wasn't reviewed; Judge didn't feel that by not turn on lights wasn't pursuing - just following

08:15:23

08:16:09 **Judge: Mitchell, John**
was Judge ever cit the statute

08:16:25 **Other: Muellenberg, Ma**
I relied on the 19-701a which also grants the officer the right to outside their jurisdiction to make a traffic stop; officer made decision to make traffic stop

08:16:44

08:18:03

08:18:05 **Judge: Mitchell, John**
why not be bound by the state factual finding why this wouldn't be unreasonable

08:18:37 **Other: Muellenberg, Ma**
bound by finding of fact that officer didn't turn on lights and didn't stop within city limits; lights don't have to be on to be pursued; 19-701A; doesn't just say you have the language; authority to cit anywhere in the state; doesn't require additional element of having to turn on lights; not in the code; adding to statute that's not there

08:20:13

08:20:59

08:21:46

08:22:29

08:22:48 **Add Ins: Marks, Doug**
Section 50-209 goes back to fresh pursuit language; doesn't matter whether 50-209 was cited before; it's fresh pursuit; since the requirement is that state show the Judge was clearly erroneous - based on totality of situation; alot of other factors that were heard and considered; no showing that the Judge's decision was clearly erroneous

08:23:18

08:23:35

08:24:11

08:24:25

08:24:39 **Other: Muellenberg, Ma**
both parties have to be within the City Limits;

08:25:51 **Judge: Mitchell, John**
portion of transcript?

08:25:59

Other: Musallenberg, Ma.
it is in his ruling for granting motion to
suppress; now looking at order
which is page 3, last paragraph

08:26:23

08:27:01

Judge: Mitchell, John
will look at order again and will read
transcript and will get decision out
asp; taken under advisement

08:27:14

08:27:28

Stop recording
(Off Record)

STATE OF IDAHO)
County of BONNER)
FILED 9-4-09
AT 12:45 O'clock P M
CLERK, DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

STATE OF IDAHO,

Plaintiff,

vs.

MATTHEW GILBERT SCOTT,

Defendant.

Case No. **CR 2008 97**

**MEMORANDUM DECISION AND
ORDER ON APPEAL**

I. PROCEDURAL HISTORY AND BACKGROUND.

This matter is on appeal from a decision of Judge Michael Griffin in the Magistrate's Division granting defendant Matthew Gilbert Scott's (Scott) Motion to Suppress. Judge Griffin heard Scott's motion on June 5, 2008, and granted the motion in his decision filed on June 6, 2008. The plaintiff State of Idaho (State) timely filed its Notice of Appeal from that decision on July 3, 2008. Both parties briefed the issue on appeal, and oral argument on the appeal was held September 2, 2009.

On December 29, 2007, Scott was arrested for and charged with misdemeanor driving under the influence. In the early morning hours of December 29, 2009, Sandpoint City Police Officer Derrick Hagstrom (Hagstrom) observed Scott's vehicle accelerate from a stop sign and reach a speed of between 32 and 35 miles per hour in an area with a posted speed limit of 25 miles per hour. Immediately after passing this area where Scott was

traveling, the speed limit increases to 35 miles per hour. Tr. p. 18, Ll. 1-6. It was snowing heavily at the time and about four inches of snow had accumulated on the ground. As a result of the road conditions, Hagstrom had difficulty catching up to Scott's vehicle and did not turn on the overhead lights on his patrol car until Scott's vehicle was outside the city limits. After Hagstrom left the city limits, he caught up to Scott's vehicle and activated his overhead lights. Scott pulled over. Hagstrom effectuated the traffic stop which led to Scott's arrest for driving under the influence. At issue is whether Magistrate Judge Griffin erred in suppressing evidence obtained after finding Hagstrom's traffic stop outside the city limits violated Idaho law where Hagstrom followed Scott outside of his jurisdiction without activating his overhead lights until he was outside Sandpoint.

II. STANDARD OF REVIEW.

Reviewing courts examine the record of the magistrate court independently of, but with due regard for the district court's intermediate appellate decision. *State v. Bowman*, 124 Idaho 936, 939, 866 P.2d 193, 196 (Ct.App. 1993). "The standard of review applicable to questions of law is one of deference to factual findings, but we freely examine whether statutory and constitutional requirements have been met in light of the facts found." *State v. Hedges*, 143 Idaho 884, 886, 154 P.3d 1074, 1076 (Ct.App. 2007); *see also State v. Cantrell*, 139 Idaho 409, 411, 80 P.3d 345, 347 (Ct.App. 2003).

III. ANALYSIS.

The State argues Hagstrom had the right to stop a vehicle which he had seen commit a traffic offense immediately prior to leaving the officer's jurisdiction. The State argues Judge Griffin erred in finding Hagstrom was merely "following" Scott, not "pursuing" him within the meaning of Idaho Code § 67-2337. Appellant's Brief, p. 3. Scott argues the State has failed to make a showing that Judge Griffin's findings were clearly erroneous.

Respondent's Brief, pp. 3, *et seq.* Scott states:

[I]f a set of circumstances was urgent enough to justify extraterritorial jurisdiction, certainly it was urgent enough for an officer to activate his emergency lights. This is the substance of the Magistrate judge's factual findings. Having considered all the evidence, he found that the officer was simply not in pursuit.

Id., p. 11.

At issue is I.C. § 67-2337 (Extraterritorial Authority of Peace Officers), which reads:

All authority that applies to peace officers when performing their assigned functions and duties within the territorial limits of the respective city or political subdivisions, where they are employed, shall apply to them outside such territorial limits to the same degree and extent only when any one (1) of the following conditions exist:

- (a) A request for law enforcement assistance is made by a law enforcement agency of said jurisdiction.
- (b) The peace officer possesses probable cause to believe a crime is occurring involving a felony or an immediate threat of serious bodily injury or death to any person.
- (c) When a peace officer is in fresh pursuit as defined in and pursuant to chapter 7, title 19, Idaho Code.

I.C. § 67-2337(2). That statute continues: "Subsection (2) of this section shall not imply that peace officers may routinely perform their law enforcement duties outside their jurisdiction in the course and scope of their employment." I.C. § 67-2337(3). Chapter 7 of Title 19 is entitled "Fresh Pursuit Law." I.C. § 19-701A reads, in relevant part:

Any peace officer of this state in fresh pursuit of a person who is reasonably believed by him to have committed a felony in this state or has committed, or attempted to commit, any criminal offense or traffic infraction in this state in the presence of such officer, or for whom a warrant of arrest is outstanding for a criminal offense, shall have authority to pursue, arrest and hold in custody or cite such person anywhere in this state.

Idaho Code 19-705 provides the definition of "fresh pursuit" as follows:

19-705. "FRESH PURSUIT" DEFINED. The term "fresh pursuit" as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include

the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

In his decision, Judge Griffin recited the facts of the case as follows:

The officer observed the pickup speeding well within the city limits of Sandpoint, followed the pickup for a significant distance within the city limits, and continued to follow the pickup (separated by a substantial distance) until the pickup was approximately one mile outside the city limits of Sandpoint and turning onto Syringa Road. At that time the officer turned on his vehicle's emergency lights. The pickup stopped immediately. During the ensuing contact between the officer and the defendant, who was the driver of the pickup, the officer concluded that the defendant was under the influence of alcohol and arrested the defendant. The officer did not contact a county deputy.

Order Granting Motion to Suppress, p. 2. Judge Griffin found Hagstrom did not have probable cause to believe a felony, or even driving under the influence, was being committed and that there was no evidence to conclude any person was in immediate danger of death or serious bodily harm. *Id.*, pp. 2-3. There was been no evidence presented suggesting that Hagstrom was acting at the request of the chief law enforcement officer of another city or political subdivision. See e.g. *In re Griffiths*, 113 Idaho 364, 369, 744 P.2d 92, 97 (1987). Therefore, Judge Griffin analyzed whether Hagstrom was in "fresh pursuit" of Scott. Judge Griffin concluded Hagstrom was merely following Scott, as opposed to "pursuing" him, and came to that conclusion because Hagstrom did not turn on his overhead lights while both he and Scott were still in city limits, despite there being "ample opportunity to do that". Order Granting Motion to Suppress, p. 3. Thus, Hagstrom did not put Scott on notice that he was being pursued and was being ordered to stop his vehicle. *Id.*, p. 3. Judge Griffin also noted that a private citizen would not have been permitted to stop Scott after observation of his having exceeded the posted speed limit and, therefore, I.C. §§ 67-2337, 19-701A remained at issue. *Id.*, p. 4.

The State argues Judge Griffin's finding that Hagstrom was "following" Scott, rather than "pursuing" Scott, is erroneous and unsupported by the record because: Hagstrom specifically used the words "to catch up to" in his testimony; the snowy conditions did not allow Hagstrom to catch up to Scott until outside Sandpoint; and Hagstrom's opting not to turn on his overhead lights while some distance behind Scott was a decision Hagstrom made as a matter of police policy to prevent Scott from fleeing. Appellant's Response to Respondent's Brief, p. 2. However, witness credibility, the ability to weigh a witness' testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the trial court. *Larkin v. State*, 115 Idaho 72, 764 P.2d 439 (Ct.App. 1988); *Campbell v. State*, 130 Idaho 546, 549, 944 P.2d 143, 146 (Ct.App. 1997). In its appellate role, this Court cannot properly reweigh conflicting evidence or substitute its judgment for the lower court's on these matters. *State v. Bettweiser*, 143 Idaho 582, 588, 149 P.3d 857, 863 (Ct.App. 2006).

At oral argument, the State claimed Judge Griffin did not consider I.C. § 50-209. At oral argument, counsel for the State admitted neither attorney referenced I.C. § 50-209 to Judge Griffin. Idaho Code § 50-209 reads:

50-209. POWERS OF POLICEMEN. The policemen of every city, should any be appointed, shall have power to arrest all offenders against the law of the state, or of the city, by day or by night, in the same manner as the sheriff or constable. Whenever such policemen shall be in fresh pursuit of any offender against any law of the state, including traffic infractions, or of the city and the offense has been committed within the corporate limits of such city, such policemen, while in such fresh pursuit may go beyond the corporate or geographical limits of such city subject to the provisions of chapter 7, title 19, Idaho Code, for the purpose of making such arrest or citation.

In its briefing, the State claims I.C. § 50-209 is the more specific code section and should control as it "specifically addresses the issue before the court." Appellant's Brief, p. 5.

While Judge Griffin did not reference I.C. § 50-209, that is of no import, as I.C. § 50-209

has "fresh pursuit" as the standard, as does I.C. § 67-2337(2). There is no reason not to believe that the interpretation of "fresh pursuit" in I.C. § 50-209 would not be the same as in I.C. § 67-2337(2), which was considered by Judge Griffin. That interpretation is under I.C. 19-705.

Idaho Code § 50-209 permits a city policeman in fresh pursuit of an offender of any law of the state or city, including traffic infractions, where such offense was committed in the corporate limits of a city, to go beyond the city limits *subject to the provision of Chapter 7, title 9*, to make an arrest or issue a citation. Fresh pursuit in I.C. § 19-705 is defined to include the common law definition along with pursuit of a person who has, or is believed to have, committed a felony and is not limited to "instant pursuit", but includes "pursuit without unreasonable delay." Here, Judge Griffin has found Hagstrom had no probable cause regarding any alleged felony committed by Scott (or probable cause to believe a misdemeanor DUI had been committed, for that matter) and the State has set forth no evidence to indicate such a finding was erroneous.

Scott argues fresh pursuit case law generally involves pursuit of a fleeing party who enters his or her home, but that the reasoning of such cases is applicable in this matter because the statute incorporates the common law definition of fresh pursuit. Respondent's Brief, p. 6. As such, Scott states an officer may only pursue a defendant following a nonviolent misdemeanor having been committed in the officer's presence where: (1) the pursuit is triggered by flight from a lawful arrest or (2) exigent circumstances beyond the pursuit itself exist. *Id.*, p. 7, citing *State v. Wren*, 115 Idaho 618, 619, 768 P.2d 1351, 1352 (Ct.App. 1989). Scott argues no exigent circumstances exist in this matter as he was driving only seven miles over the posted speed limit immediately before he entered a 35 mph zone. *Id.*, p. 8. In response, the State argues that the heightened expectation of

privacy citizens have in their homes precludes application of *Wren* to these facts.

Appellant's Response to Respondent's Brief, p. 4.

Ultimately, this Court is being asked by the State to determine that Judge Griffin erred in his analysis of fresh pursuit given the facts of the instant matter. The State argues:

The Respondent's (and Magistrate's) reading of the controlling statutory law is erroneous. The Idaho State legislators chose to specifically include language in I.C.[§] 50-209 and I.C. [§] 19-710A that allows an officer that "reasonably believed a traffic infraction has been committed in his presence" to go beyond his jurisdictional limits to issue a citation.

Appellant's Response to Respondent's Brief, p. 3. While this statement is accurate, it presupposes that the officer was in "fresh pursuit." There is nothing before this Court to indicate Judge Griffin's findings (that Hagstrom was merely following, not pursuing) should not be entitled to deference.

Although Judge Griffin was cited no case law at the June 5, 2009, hearing (Tr. p. 20, L. 9 – p. 24, L. 24), and both attorneys declined the invitation of Judge Griffin to provide briefing (Tr. p. 24, L. 25 – p. 25, L. 3), Judge Griffin's sense of the status of the applicable case law regarding "fresh pursuit" was accurate. While there is a dearth of Idaho appellate case law on this issue, this Court has reviewed two cases outside our State.

Seip v. State, 835 A.2d 187 153 Md.App. 83 (Ct.SpecialApp.Md. 2003) has remarkably similar facts. In that case, in the early morning hours, the officer observed Seip speeding within the Ocean City town limits. The officer "...initiated the traffic stop as Seip drove westbound over the Big Assawoman Bay Bridge, waiting, due to safety concerns, to reach the far side before pulling him over." 835 A.2d 187, 188, 153 Md.App. 83, 84. The stop occurred outside the city limits and Seip was arrested for driving while impaired. It is not clear, but a reading of those facts indicates that the officer had activated his lights early

on, and simply did not pull him over until after he reached the other side of the bridge. The Maryland Court of Special Appeals held: "Austin witnessed Seip's violations while still inside the Ocean City corporate limits, and was *pursuing* Seip as he drove over the city line into Worcester County Jurisdiction." 835 A.2d 187, 192, 153 Md.App. 83, 90. (emphasis added).

In *City of Overland Park v. Zabel*, 32 Kan.App.2d 1136, 95 P.3d 124 (Ct.App.Kansas 2004), the officer observed Zabel speeding within Overland Park and "...immediately began pursuing the defendant's vehicle, activating the lights and sirens on his patrol car." 32 Kan.App.2d 1136, 1137, 95 P.3d 124, 125. At the time of the stop, Zabel was in the town of Merriam. Under those facts, the Court of Appeals of Kansas held: "Here, Officer Black observed the defendant speeding in Overland Park and initiated "fresh pursuit." 32 Kan.App.2d 1136, 1139, 95 P.3d 124, 126.

At oral argument, counsel for the State argued that adding the additional requirement of an officer turn on his overhead lights in order for there to be "fresh pursuit" is error. However, neither in oral argument nor in briefing did the State provide any authority for such proposition. The above case law shows Judge Griffin analyzed "fresh pursuit" correctly. Judge Griffin wrote:

There is a difference between "pursuing" a vehicle and "following" a vehicle.

In this case if the officer had turned his emergency lights on while both he and the defendant's vehicle were within the city limits of Sandpoint (there was ample opportunity to do that), the officer could be fairly said to be "pursuing" the defendant and the defendant would be put on notice that he was being "pursued" and being ordered to stop his vehicle. In this case the officer did not turn on his emergency lights, nor in any other way indicate to the defendant that he was "pursuing" him and ordering him to stop, until they were approximately one mile outside the city limits. The court concludes that while the officer was "following" the defendant's vehicle he was not in "pursuit" of that vehicle.

Order Granting Motion to Suppress, p. 3. While the point in time in which Hagstrom activated his overhead lights was a significant factor in Judge Griffin's analysis, the above cases show activation of an officer's overhead lights *should* be a significant factor in a "fresh pursuit" analysis. The above also shows activation of Hagstrom's overhead lights was not the *only* factor and that Judge Griffin considered the totality of the circumstances in making his decision. Judge Griffin wrote: "In this case the officer did not turn on his emergency lights, *nor in any other way indicate to the defendant that he was "pursuing" him and ordering him to stop*, until they were approximately one mile outside the city limits. *Id.* (emphasis added).

Finally, pursuit involves more than just following. Pursuit is defined in Black's Law Dictionary as "The act of chasing to overtake or apprehend. See FRESH PURSUIT." Black's Law Dictionary, 7th Ed., p. 150 (1999). That definition looks at the situation from Hagstrom's point of view or from the point of view of an outside observer. At the time Hagstrom left Sandpoint's city limits, he was doing nothing more than following Scott. When Hagstrom activated his lights, he was at that moment in "pursuit". However, prior to that moment, nothing of Hagstrom's driving would indicate to an outside observer that Hagstrom was doing anything other than driving and perhaps following someone. "Fresh pursuit" is defined as "The right of a police officer to make a warrantless search of a fleeing suspect or to cross jurisdictional lines to arrest a fleeing suspect." *Id.*, p. 977. This definition looks at the situation from Scott's point of view. There is nothing in the record to indicate that Scott, at the time Hagstrom activated his lights, was fleeing anything. Scott testified before Judge Griffin that due to how hard it was snowing, Scott had no idea a police officer was behind him until Hagstrom turned on his overhead lights. Tr. p. 17, Ll. 17-23. Scott's speed did not vary the entire time, he made no attempt to flee. Tr. p. 18, L.

1 – p. 19, L. 10. Nothing indicates Scott was doing anything other than driving, albeit too fast as he passed by Hagstrom while in the City of Sandpoint. After passing Hagstrom, the speed limit increased, and Scott's speed was below that speed limit the remainder of the time Hagstrom observed Scott's driving.

I.V. CONCLUSION AND ORDER.

For the reasons stated above, the decision of Judge Griffin granting Scott's Motion to Suppress must be affirmed.

IT IS HEREBY ORDERED, the decision of Judge Griffin granting Scott's Motion to Suppress is AFFIRMED in all aspects. The case is remanded to Magistrate Division for any further action.

DATED this 4th day of September, 2009


JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 4 day of September, 2009 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Defense Attorney – Doug B. Marks FAX 263 0759 ✓
Prosecuting Attorney – Lori Muelenberg FAX 255-1368 ✓
Honorable Michael Griffin
403 Oak St.
Grangeville, ID 83530 *Mid*

Faxed Bonner Co. Courthouse

CLERK OF THE DISTRICT COURT
BONNER COUNTY

BY: 
Deputy

LAWRENCE G. WASDEN
Attorney General
State of Idaho

STEPHEN A. BYWATER
Deputy Attorney General
Chief, Criminal Law Division

KENNETH K. JORGENSEN
Idaho State Bar # 4051
Deputy Attorney General
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2009 SEP 23 P 2:08

MARIE SCOTT
CLERK DISTRICT COURT
mm
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR BONNER COUNTY

STATE OF IDAHO)	
)	
Plaintiff-Appellant,	)	District Court No. CR08-97
)	
vs.	)	NOTICE OF APPEAL
)	
MATTHEW GILBERT SCOTT,)	
)	
Defendant-Respondent.)	
)	

TO: MATTHEW GILBERT SCOTT, THE ABOVE-NAMED
RESPONDENT, DOUG B. MARKS, ELSAESSER JARZABEK ANDERSON
MARKS & ELLIOTT, CHTD., PO BOX 1049, SANDPOINT, ID 83864 AND THE
CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant, State of Idaho, appeals against the
above-named respondent to the Idaho Supreme Court from the Memorandum

Decision and Order on Appeal, entered in the above-entitled action on the 4th day of September 2009, The Honorable John T. Mitchell presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(c)(10), I.A.R.

3. Preliminary statement of the issue on appeal: Whether the district court erred when it affirmed the magistrate's suppression motion on appeal.

4. To undersigned's knowledge, no part of the record has been sealed.

5. The appellant requests the preparation of the following portions of the reporter's transcript: The Appellant does not request that any new transcripts be prepared. The Appellant does request that the transcript prepared for the appeal to the district court be included in the record.

6. Appellant requests the normal clerk's record pursuant to Rule 28, I.A.R. The Appellant further requests that the briefing and transcript submitted to the district court on appeal be included in the record as exhibits.

7. I certify:

(a) That a copy of this notice of appeal is being served on each reporter of whom a transcript has been requested as named below at the address set out below:

JULIE FOLAND
Court Reporter
Kootenai County District Court
PO Box 9000
Coeur d'Alene, ID 83816-9000

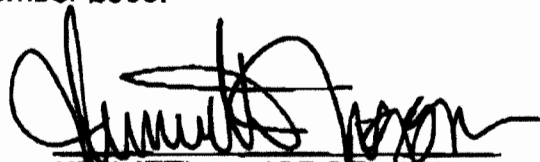
(b) That arrangements have been made with the City of Sandpoint Attorney who will be responsible for paying for the reporter's transcript;

(c) That the appellant is exempt from paying the estimated fee for the preparation of the record because the State of Idaho is the appellant (Idaho Code § 31-3212);

(d) That there is no appellate filing fee since this is an appeal in a criminal case (I.A.R. 23(a)(8));

(e) That service is being made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 23rd day of September 2009.


KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 23rd day of September 2009, caused a true and correct copy of the attached NOTICE OF APPEAL to be placed in the United States mail, postage prepaid, addressed to:

THE HONORABLE JOHN T. MITCHELL
Kootenai County District Court
PO Box 9000
Coeur d'Alene, ID 83816-9000


THE HONORABLE MICHAEL J. GRIFFIN
403 Oak Street
Grangeville, ID 83530

LORI T. MEULENBERG
Sandpoint City Prosecutor
1123 Lake St.
Sandpoint, ID 83864

DOUGLAS B. MARKS
Elsaesser Jarzabek Anderson Marks & Elliott, Chtd.
PO Box 1049
Sandpoint, ID 83864

HAND DELIVERY

MR. STEPHEN W. KENYON
CLERK OF THE COURTS
P.O. Box 83720
Boise, Idaho 83720-0101


KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/pm

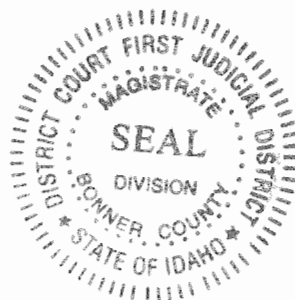
IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	SUPREME COURT NO. 37018
)	
Plaintiff-Appellant,	)	CLERK'S CERTIFICATE
)	
vs.)	
)	
MATTHEW GILBERT SCOTT,)	
)	
Defendant-Respondent.)	
_____)	

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellant Rule 28.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 16 day of November, 2009.

MARIE SCOTT
Clerk of the District Court



Susan M. Mueller
Deputy Clerk

Clerk's Certificate

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	SUPREME COURT NO. 37018
)	
Plaintiff-Appellant,	)	CLERK'S CERTIFICATE OF EXHIBITS
)	
vs.)	
)	
MATTHEW GILBERT SCOTT,)	
)	
)	
<u>Defendant-Appellant.</u>)	

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

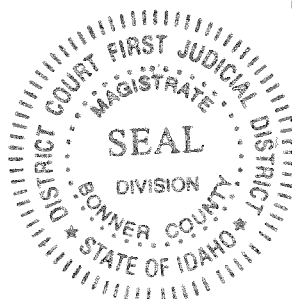
CONFIDENTIAL ENVELOPE

Criminal Record Summary Sheet printed May 6, 2008
Criminal and Driving Record Report filed May 6, 2008

Exhibit List filed June 5, 2008
Map of Sandpoint; Def Exhibit A admitted June 5, 2009
Transcript of Motion Hearing held June 5, 2008 filed November 5, 2008
Minute Entry filed December 16, 2008
Appellant's Brief filed January 7, 2009
Respondent's Brief filed April 9, 2009
Appellant's Response to Respondent's Brief (with CD) filed April 28, 2009

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 16 day of November, 2009.

Marie Scott
Clerk of the District Court



Susan M. Mueller
Deputy Clerk

Certificate of Exhibits

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

MATTHEW GILBERT SCOTT,

Defendant-Respondent.

SUPREME COURT NO. 37018

CERTIFICATE OF SERVICE

I, Marie Scott, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Parcel Service or US Priority Mail one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
P. O. BOX 83720
BOISE, IDAHO 83720-0010

ATTORNEY FOR APPELLANT

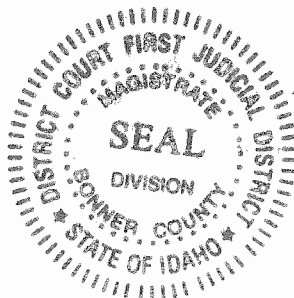
DOUGLAS B. MARKS
ATTORNEY AT LAW
P.O. BOX 1049
SANDPOINT, ID 83864

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 16 day of November, 2009.

Marie Scott
Clerk of the District Court

Susan M. Mueller
Deputy Clerk



Certificate of Service